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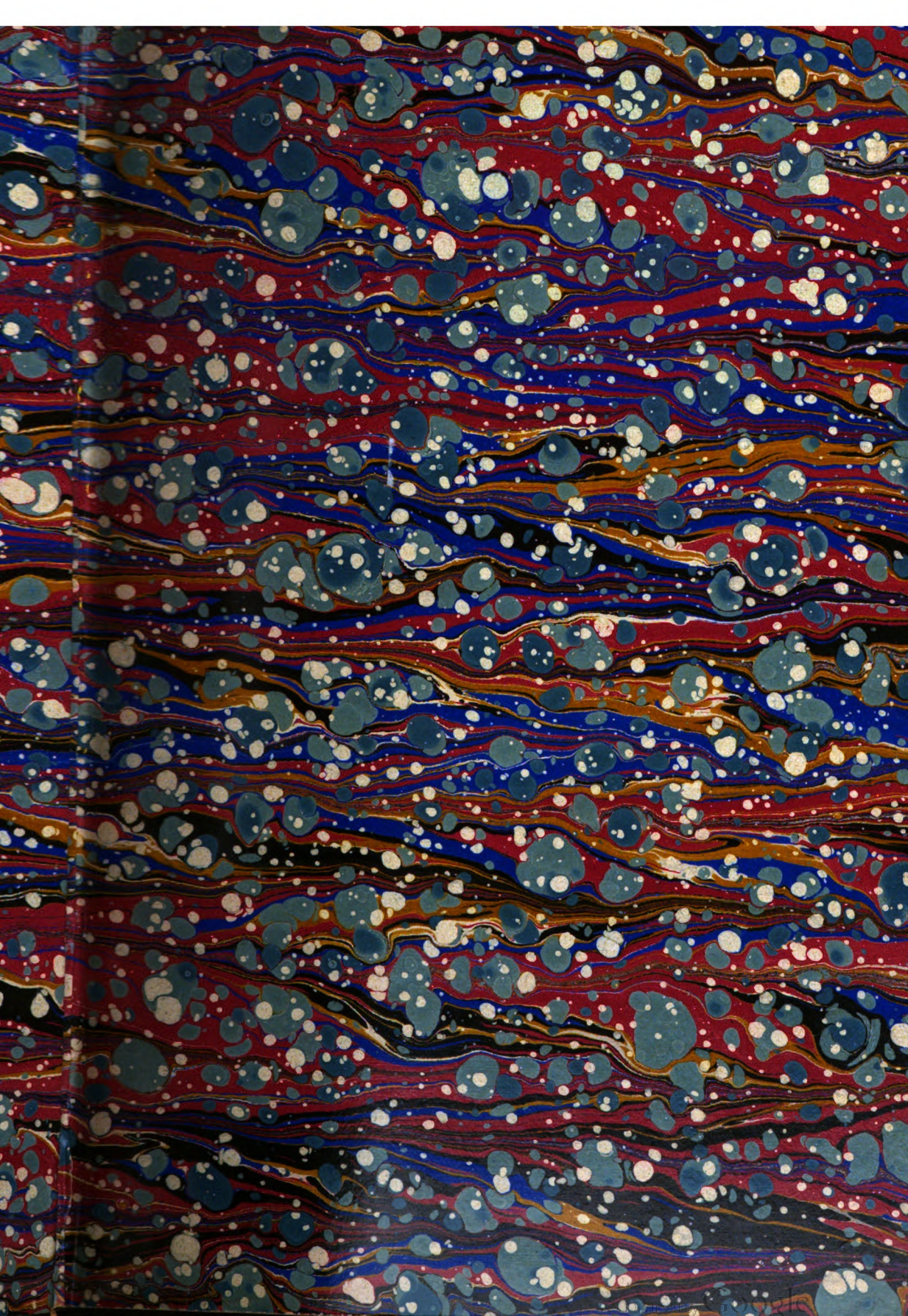
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Vol. 14
Ex. C.
United States Circuit Court,

SOUTHERN DISTRICT OF NEW YORK.

cf
The American Bell Telephone Company, et al.,
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vs.

The People's Telephone Company, et al.

EVIDENCE FOR COMPLAINANTS.

VOL. III.

REJOINDER.

CLOSING PROOFS.

HARRISBURG:
LANE & HART, PRINTER AND BINDER.
1884.



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IN THE
United States Circuit Court,
FOR THE SOUTHERN DISTRICT OF NEW YORK.

American Bell Telephone Company *et al.*

vs.

People's Telephone Company *et al.*

IN EQUITY.

TESTIMONY FOR COMPLAINANT'S IN REJOINDER.

Before Fred. M. Ott, Esq., Special Examiner.

HOTEL LAFAYETTE, APRIL 10, 1884, 10, A. M.

Present, Mr. Storrow, for complainants, and Mr. T. S. E. Dixon and Mr. M. W. Jacobs, for respondents.

WILLIAM C. PATTERSON, *being produced, sworn, and examined, saith:*

Examined by Mr. Storrow:

My age is thirty-five; I reside at a place called Hartman's Mills, or Glenvale, in Rye township, Perry county, Pennsylvania; I am a blacksmith; Glenvale is up Fishing Creek Valley, about four miles from Marysville.

Q. 1. Since what time have you carried on the blacksmithing business for yourself, at Hartman's Mills?

A. Since 1874—about ten years.

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Q. 2. A witness named Peter J. Heisley was called for the defendant's, (see defendant's sur-rebutting testimony, page 626,) and testified that he was thirty-five years old; that his father, named Philip Heisley, died September 3, 1883; and it further appeared (see pages 633 and 663) that he had brothers named Christian I., Joseph F., Philip, William, Dan, Edward, Charles, and George, and that their father's farm, which some of them now occupy, is in Rye township, about three and a half miles from Marysville. Do you know that Heisley family, and how long have you known them?

A. For ten years. I have known them longer than that, but have been well acquainted with them for ten years.

Q. 3. How near to your shop is the Heisley farm?

A. Somewheres about a quarter of a mile, or maybe a little bit further.

Q. 4. Have you been in the habit of doing the Heisley blacksmithing work ever since you have carried on business at Hartman's Mills?

[*Objected to as leading and immaterial.*]

A. Yes, sir.

Q. 5. Please look at the reaming-bit now shown you, which is marked with your initials, and which the examiner will mark for identification, and state whether or not you did the blacksmithing work on it?

[*Objected to as immaterial.*]

[*The Examiner marks said bit, "Heisleys Reaming-bit, F. M. Ott, April 10, 1884.*]

A. I did.

Q. 6. Whom did you do it for?

[*Same objection.*]

A. Old Pap Heisley.

Q. 7. Who furnished the materials out of which it was made?

[*Same objection to this and all subsequent questions relating to said reamer.*]

A. Pap Heisley.

Q. 8. Who brought the materials to you to have the work done?

A. Pap Heisley.

Q. 9. What was the steel cutting part made out of?

A. Out of a saw-blade.

Q. 10. What was the work you did upon this bit at that time?

A. Cutting off the saw-blade, and shaping it, and punching the holes; the old gentleman helping me.

Q. 11. Was the old gentleman in the habit of doing blacksmithing work?

[*Objected to also as leading.*]

A. Yes, sir.

Q. 12. At the time you made this bit for Mr. Heisley, did you do any other work for him; and if so, what?

A. Yes, sir; I fixed a boring-machine.

Q. 13. What kind of a thing was the boring-machine; what was it for, and what did you do with it?

[*Same objection as to all questions relating to the boring-machine.*]

A. To bore logs. I straightened it, and made a key for it. It had a long rod attached to it, and I straightened that.

Q. 14. What was the key used for in it?

A. To attach the boring-machine to it—to hold that in the socket that was on the rod.

Q. 15. What kind of a thing was the boring part, that you have just called the boring-machine?

A. It was similar to an auger; it had a screw to it, to cut its way in with.

Q. 16. Had you ever done any work on any bit, or boring-machine, or pump-log auger, for Mr. Heisley before that?

A. No, sir; not to my knowledge.

Q. 17. Whom did this boring-machine belong to?

[*Objected to also because it does not appear that the witness knows of his own knowledge, or other than by hearsay, to whom it belonged.*]

A. It belonged to Mr. Emanuel Keller.

Q. 18. How far did Mr. Keller live from your shop at that time, and in which direction—up, or down the valley?

A. Up the valley, about two or three miles.

Q. 19. Does he live at the same place now?

A. I believe he does, unless he has moved since the first of the present month?

Q. 20. Did Mr. Heisley at the time you did this work tell you what he was going to do with this boring-machine and reaming-bit; if so, what did he tell you?

[*Objected to, also, as incompetent, calling solely for hearsay testimony.*]

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A. Bore his logs to run his water down from his spring to his spring-house.

Q. 21. Did you see any work going on about Mr. Heisley's log aqueduct, about the time that you did this work; and, if so, how did you happen to see it, and what was the general character of it?

[*Objected to, also, as leading, especially as relates to the time.*]

A. I made a habit of going to Heisley's as friends and neighbors that way, and was there with the boys; and I seen this work there, that they were doing. They were boring logs, and digging the ditch.

Q. 21½. Did you or did you not, see this work about the time you made this bit?

[*Last objection repeated.*]

A. Somewheres near the time.

Q. 22. If you have your books here, will you state, if you can from them, when you began work at Hartman's Mills, and the date of the first charge after you began business there?

[*This and subsequent questions relating to said books objected to as immaterial.*]

A. I began work there in 1874; April 28th, 1874, is the first charge of work done for anybody.

Q. 23. Have you in your books an account with Mr. Heisley for work done for him; if so, will you please point it out to the examiner, in order that he may note the page or pages where it appears, the period of time which it covers, and the extent of it?

A. It appears there is no record of the first; it says "Old bill 65 cts," that is the first charge; there was work done before that; the next charge is "Two old shoes 25;" there is no date to these two charges. The next charge is as follows: "June 1, 1 new shoe 37." There is no year written on this page; the page is headed "P. Heisley," contains twenty-one items, all dated June and July, and is footed at the bottom "\$8.32."

Q. 24. What is the date of the first item on the preceding page, and whose account is it; and what is the date of the first item on the next page, and whose account is it?

A. John Snyder's account on the preceding page, and the first item is "May 25th, 1874;" on the next page is Joseph Bullinger's account, and the first item is June 1, 1874."

Q. 25. I observe that no year is given on the page of Mr. Heisley's account just referred to, but that it is among the 1874 accounts; what year does that account with Mr. Heisley belong to?

A. 1874.

Q. 26. Please turn to the continuation of Mr. Heisley's account, in the same book, and point it out to the Examiner.

A. Here they are.

[The first page pointed out has for its first date 1874, Aug. 1, and the entries are dated consecutively in August and September, the last being Sept. 16. The page contains 21 items and is footed at the bottom "635."

The next page pointed out has its first date, "1874" "Sept 16;" contains 21 items, dated September, October, and November, the last being Nov. 29, and is added up "6.91."

The next one has for its first date, Dec. 22, contains entries for Dec., Jan., Feb., March, April, the last being April 10. There are 21 items, and it is footed at the bottom "8.22."

The next begins with the date April 17, 1875, contains entries in April, May, and June, the last being June 29; there are 21 entries, and it is footed up "\$4.78."

The account continues on the other side of the same leaf of the book and contains entries in July, August, September, and October, the last being October 8. It is footed up \$5.67. These entries are written on the regular lines. There is another entry written crosswise in the book, as follows: "Nov. 23 Pea Heisley Dresing Grubbing Hoe 10."]

Witness says: "I shall now have to turn to the next book." [On page 55 of book number two is an account headed "Philip Heisley" the first date in which is: "1875 Oct. 16, carried from old book." The account contains entries dated October, November, December; 1876, January, February. It continues on pages 56, 57, 58 and 59, with dates in the following consecutive months: March, April, May, June, July, August, September, October, November, December; the last entry being a pencil entry dated January, the preceding one being in ink, and dated December 27th. These pages contain 149 entries.]

Witness says: "I believe that is all. There might be more in the book, though. I will look over it."

Witness continues: "Here is another on page 145. [The first date is that of Feb. 1, 1877. It contains 27 entries in February, March, April, and June, the last being June first. The account continues on

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the following pages: 146, 147, 148, 149, 150, the last entry being September, 1878."

[Witness looks over the book and says: "That is all in this book."

The Examiner has written his name on all the pages referred to in both books.]

Q. 27. Will you please point out in this account the charges for the work in making Heisley's reaming-bit, and repairing the boring-machine, which you have testified about?

A. Here they are.

[Witness points out the following entry on page 56 of book No. 2, headed:

"P Heisley 1876."

"Mc 22 fixing Boring machine	35
Making Bit	10"]

Q. 28. In whose handwriting are those entries which the examiner has just copied?

A. Mine.

Q. 29. Did you make them at or about the time of their date—March 22, 1876?

[Objected to, also, as leading.]

A. I made them at their date.

Q. 30. Was that the time when you did the work that you have testified about on the boring-machine and reaming-bit?

[Same objection.]

A. Yes, sir.

Q. 31. I asked you some days ago to look through all this account with Heisley, and find out whether there was any other charge in it for work on boring-machine and bit; did you do so, and is there any charge in it for such work, except this one?

[Objected to as incompetent, the books here produced being the best evidence on that point. The books are offered by Mr. Storrow for the inspection of Defendants' counsel.]

A. There is none except this one.

Q. 32. Do you know George W. Kissinger, who formerly lived at Marysville?

A. Yes, sir.

Q. 33. Do you know anything about his getting an auger from Mr. Keller to bore logs with? Did you ever see it in Mr. Kissinger's pos

session? If so, where was it; what was he doing with it, and under what circumstances?

[*Objected to as incompetent, and also improper evidence in rejoinder.*]

A. I seen it at my shop. He brought it from Mr. Keller's.

Q. 34. Was it before or after you made this reaming-bit?

[*Same objection.*]

A. After.

Q. 35. Are you able to state how long after?

[*Same objection.*]

A. Some time after. I wouldn't be able state any time.

[*A general objection is entered to the foregoing deposition as immaterial, irrelevant, and not in rejoinder.*]

Recess until 2, P. M.

Cross-examined by Mr. Dixon, de bene esse:

Cross-Q. 36. Please describe the form of the auger you say you straightened for Mr. Heisley.

A. It is an auger about fifteen feet long, which is in two pieces, with a socket in one end for the auger to go in, and a key-hole for a key.

Cross-Q. 37. In other words, the auger is a long rod, with a socket in one end of the rod and a handle across the other end.

[*Objected to as a misstatement of the witness' testimony.*]

A. Yes, sir.

Cross-Q. 38. The boring part is inserted into the socket on the end of the rod, like the manner in which the ordinary bit is inserted in a carpenter's brace; is it not?

A. Somewhere near that, only this has a key, you know.

Cross-Q. 39. If I understand you, the bit is fastened in a carpenter's brace by a catch and spring, but this bit was fastened into the auger by a key or wedge.

A. Yes, sir.

Cross-Q. 40. This tool, then, was simply a large auger with the bit detachable from the rod.

A. Yes, sir.

Cross-Q. 41. There are a variety of forms of bits made for wood-boring purposes, some with a cutting-edge in spirals, and others with a

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flat blade with a cutting flange turned over on the end, as well as other forms, are there not—such as you see accompanying most any carpenter's brace?

A. There are such kinds, but this wasn't such kind.

Cross-Q. 42. All of these various kinds of bits have their ends adapted to enter a socket on the stock and be detachable from it; do they not?

A. Yes, sir.

Cross-Q. 43. Please describe this key you made to attach the bit in the socket of the auger. Was it anything more than a little flat piece of iron in the form of a key or wedge?

A. That is about the way in which it was made.

Cross-Q. 44. How long did it take you to make that key?

A. I suppose about five minutes, or along there, as near as I can tell.

Cross-Q. 45. I believe you stated that all the other work you did on the auger was straightening the rod; am I correct?

A. Yes, sir.

Cross-Q. 46. How long did that take?

A. That might have took me half an hour.

Cross-Q. 47. You say "it might have;" do you now remember just how long, as a matter of fact, it did take to straighten that rod?

A. No, sir; but I would judge about that long. It might not have took me more than twenty; but I would judge between twenty minutes and a half an hour, as near as I can tell.

Cross-Q. 48. You have stated that there is a charge in your books, for fixing a boring-machine, of thirty-five cents. Upon what is this charge based; that is, is this thirty-five cents based upon the time that you spent in that work; or does it also include something for the value of the iron in the little key you made?

A. Time and iron.

Cross-Q. 49. How many ounces did that little key weigh, as near as you can estimate?

A. I wouldn't want to answer that—I couldn't hardly answer that.

Cross-Q. 50. Why?

A. It is something that I never weighed—anything small.

Cross-Q. 51. But you are handling little pieces of iron all the time in your work. Please give an estimate as near as you can of about how much that key weighed, remembering how small a space it entered in the socket against the inclosed end of the bit.

[*Question objected to as asking for guess-work.*]

A. I would rather not answer that, because it is something I never weighed.

Cross-Q. 52. Well, how thick was the key?

A. It might have been quarter-inch, or three-eighths, or along there.

Cross-Q. 53. How wide was it?

A. It might have been inch and a quarter, or along there.

Cross-Q. 54. How long was it?

A. It might have been about three inches, or along there.

Cross-Q. 55. Can you say that that little piece of iron weighed as much as a quarter of a pound?

A. No, sir; I can't.

Cross-Q. 56. What were you paying for wrought iron per pound?

A. Three and a half, up to six and seven cents a pound.

Cross-Q. 57. Then, the cost of that little piece of iron cut an insignificant figure, as compared with your time and labor, did it not?

A. Yes, sir; we charged according to our judgment, though.

Cross-Q. 58. Please look at the reamer that has been produced here, and state, if you can, what the hard wood handle was made out of?

[*Objected to as asking for guess-work, as the witness has testified that he did not make it.*]

A. Made out of oak, I believe. It may be pin-oak or white oak. I wouldn't say which. I believe it is oak.

Cross-Q. 59. What kind of tool was used in giving it the shape it now presents?

[*Same objection.*]

A. That I wouldn't be able to tell you.

Cross-Q. 60. Why not?

A. Because I didn't see him make it.

Cross-Q. 61. Do you mean to say that Mr. Heisley brought that handle in just the shape it is now to your shop, when he came there on that occasion?

A. I wouldn't be able to say.

Cross-Q. 62. That is, if I understand you, you are unable to say whether it came there in just that shape, or whether it was put in that shape after he came there.

A. I couldn't answer that. He could have changed it there on the vise or at the wood-pile, but not to my recollection.

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Cross-Q. 63. That is, as you have just said, you are unable to state, and can't say whether he did or not?

A. Yes, sir.

Cross-Q. 64. What kind of a saw-blade was the blade of this reamer made of?

A. One of these here up and down saws, as near as I can tell.

Cross-Q. 65. Do you mean a cross-cut saw, or what do you mean?

A. No, sir; an up and down saw in a water-power saw-mill, in the old-fashioned way.

Cross-Q. 66. Was the entire saw-blade brought there?

A. No, sir.

Cross-Q. 67. How long was the piece that was brought there?

A. It could have been about two feet.

Cross-Q. 68. It could have been almost any small number of feet; please tell us its length as you remember it.

A. Well, somewheres along there about two feet, as near as I can tell, to my best recollection.

Cross-Q. 69. Was this piece out of the middle of a saw, or from one end?

A. From one end.

Cross-Q. 70. Did it have teeth on its edge?

A. Some few at the one end, where it had been broken off.

Cross-Q. 71. How many inches of teeth in length?

A. About six inches or along there, as near as I can tell.

Cross-Q. 72. Then as you have stated that the piece was about two feet long, the blade had extended about a foot and a half at the end beyond the teeth.

A. That is about as near right as I can get it, to my recollection.

Cross-Q. 73. Was there a hole through the piece?

A. I believe there was.

Cross-Q. 74. How far was this hole from the end upon which the teeth were?

A. It could have been an inch and a half or two inches from the end, but not the end that the teeth were on; I mean it was an inch and a half or two inches.

Cross-Q. 75. How did you get this reamer-blade out of that piece of saw-blade?

A. I heated it, and cut it out with a chisel.

Cross-Q. 76. Whereabouts out of the saw blade did you cut this piece?

A. From the end that didn't have any teeth on.

Cross-Q. 77. How did you heat the piece of saw-blade; and how hot was it heated—to a red or white heat?

A. I heated it in the blacksmith-fire red hot—as to an ordinary heat for steel.

Cross-Q. 78. How long did this heating take to bring it to a temperature along a sufficient length of the blade?

A. About two minutes, or along there; it depends on the condition of the fire.

Cross-Q. 79. Do you remember, now, the exact condition of that fire at that time; or is what you have just stated an estimate of your present judgment on the matter?

A. As near as I can tell, it is right; I never time myself to any heating.

Cross-Q. 80. I asked you if you remember now the exact condition of the fire at that time?

A. No, not exactly, I can't.

Cross-Q. 81. Did you have what is called a blacksmith's helper at that time?

A. I don't think I had at that time?

Cross-Q. 82. You made this key for the auger at the same time, did you?

A. Yes, sir.

Cross-Q. 83. Did you work the blast yourself, personally?

A. Yes, sir.

Cross-Q. 84. You heated the irons that were heated on that occasion yourself personally and without assistance; did you?

A. Yes, sir; in the heating part.

Cross-Q. 85. How wide was this saw blade?

A. I would judge, between seven and eight inches, or along there—the wide part of it.

Cross-Q. 86. Did you take the length of the reamer-blade, that is, the blade from one end to the other, out of the length of the saw-blade, or across it?

A. Longways, I believe.

Cross-Q. 87. That is, as I understand you, the length in the direction

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of the shank that is riveted on the reamer-blade was taken from the long portion of the saw-blade instead of across the blade.

A. As near as I can tell that is about it.

Cross-Q. 88. Describe how you cut this reamer-blade out of the hot saw-blade.

A. As near as I can tell we took the boring-machine auger and measured it, and then we made allowance, cutting this in a slanting shape. We didn't have any rule to go by only our own judgment.

Cross-Q. 89. How did you cut it?

A. I cut it with a chisel and a sledge.

Cross-Q. 90. That is, would you cut through with the chisel and then set it along, and then cut through again, and then set it along again, and so forth?

A. We scratched it off first the shape we wanted it, and then we dotted it with the center punch, or dot-punch, and then we heated it and cut it off, following up the mark; we had to make the second heat on it, anyway.

Cross-Q. 91. I notice, along the longitudinal, unsharpened edge of the reamer-blade marks, evidently made by some cutting tool not cutting through; are these the marks of the cold-chisel?

A. Yes, sir; the cold-chisel.

Cross-Q. 92. I notice that the edge upon the top of the reamer-blade, at the widest end, is smooth; what does that indicate?

A. That indicates the back of the saw, I suppose.

Cross-Q. 93. Then, instead of the length of the reamer-blade being taken along the length of the saw-blade, it must have been taken across the saw-blade, so as to bring the back of the saw coincident with the upper end of the reamer-blade; must it not?

A. Yes; like I laid it off here is the way I cut it, [*indicating a blotting-pad on which he had drawn the shape of the piece cut off while testifying,*] that is, across the blade instead of lengthwise. That is as near as I can recollect, such things you can't keep down fine.

Cross-Q. 94. As the top of the reamer-blade was originally the back edge of the piece of saw-blade, in cutting this piece out of the saw-blade you had to cut with the cold-chisel three sides or edges, to wit: the two diagonal long edges, and the edge at the lower end of the reamer; did you not?

A. I would have to cut two sides off. To my recollection, I don't think I cut the lower end off; I might have.

Cross-Q. 95. Was this piece cut off by you from the very end of the piece of saw-blade, or in a few inches?

[*Objected to as already answered.*]

A. It was not cut off at the very end. It was cut to clear the holes.

Cross-Q. 96. After you had got this piece cut off, how did you get the sharp edge on the reamer so that it would cut wood?

A. With a hammer and a file. The old gentleman done a good deal of it, and the balance he done on a grindstone. I suppose that is the way he got it sharp.

Cross-Q. 97. Who turned the grindstone while the edge of the reamer was being sharpened on the stone?

A. I don't know. That is the way he told me he would do it.

Cross-Q. 98. Did you have a grindstone on your premises?

A. I did.

Cross-Q. 99. Do you remember, so that you can state, whether this reamer-blade was sharpened on that stone or not?

A. No, sir; I don't.

Cross-Q. 100. Tell us how you sharpened it, as far as possible, with a hammer?

A. That would be pretty hard to answer. I don't just recollect; but it is more natural to lay a flat piece of iron down and hammer the edge, and then file it as much as we could, and then let him do the rest himself.

Cross-Q. 101. The steel being about $\frac{3}{16}$ of an inch thick—did you hammer it down cold, or heat it?

A. A natural heat, as you heat steel.

Cross-Q. 102. After you had hammered it down, then did you screw it into a vise and file it?

A. I suppose that is the way we done. We often take steel and heat it, and then take the file while it is hot, and file it.

Cross-Q. 103. I am inquiring as to the fact in this case; how did you do it?

A. We put it in the vise edge-ways, and then filed over it while it was hot, as near as I can tell.

Cross-Q. 104. Then, so far as the assistance of the old man was concerned, that you referred to on your direct examination, if I now understand you correctly, it consisted in making the handles, in helping file the edge of the reamer, and in grinding it; am I correct?

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A. Yes; he ground it himself. He helped punch the holes; and he done the riveting, and put the handle on himself.

Cross-Q. 105. While he was helping you punch the holes, and while you were doing this job, can you remember that you were engaged on any other job for anybody else; and if so, can you give their names?

A. No, sir.

Cross-Q. 106. I see there are two holes in this reamer-blade, through which it is riveted, how did you make these holes?

A. I put it on top of the flat end of the anvil, over the heading-tool, while hot, and punched them through with a sharp punch.

Cross-Q. 107. What did you make the shank out of, which is flat at one end, and smaller at the other end?

A. I couldn't tell you that, only that it is made out of iron; that is all.

Cross-Q. 108. Did you heat it in order to give it the shape it is now in?

A. Certainly, I heated it; I made it in a rough way.

Cross-Q. 109. How did you make the holes in this shank, through which the rivets pass to the reamer-blade?

A. I punched them in.

Cross-Q. 110. What did you make the rivets out of?

A. Indeed, I couldn't tell you that; I might have picked up some old bolts or something, or I might have made them—I couldn't say, now, exactly.

Cross-Q. 111. How did you head them, after they had been inserted in place?

[Objected to because the question has already been answered.]

A. We have a drill to counter-sink on, and we have a counter-sink made out of iron or steel which we set on top and strike, and it sinks it just the same as if you drill it out. I don't remember which we used, or whether we used any.

Cross-Q. 112. You mean you counter-sunk the holes in the plate.

A. Yes, sir; we do that in order to bring the rivet level with the plate.

Cross-Q. 113. Did you do that before, or after you bent the plate to its present rounded form?

A. That I couldn't answer. We could do it, if we would want to, before, or we could do it after.

Cross-Q. 114. Did you rivet the shank on to the plate before, or after the plate was bent into its rounded form ?

A. Afterwards.

Cross-Q. 115. How did you head up the rivets after they were inserted ?

A. With a riveting hammer over the end of the horn of the anvil ; and then we have a smaller horn that goes into a vise to get down to an inch or so. There are a number of ways of doing it.

Cross-Q. 116. Of course there are a number of ways. I asked how you did it, as a matter of fact ?

A. Over the horn. I don't recollect whether we used the second smaller one or not.

Cross-Q. 117. I notice that where the shank enters the handle there are marks looking like charring on the wood. Please explain that.

A. He put the handle on, as I said before. The cause of that must be that he bored it first and then burnt it to make it the size, but he done it himself.

Cross-Q. 118. Did you see it done ?

A. I seen him doing it at the vise. I didn't pay particular attention to him, but I know that is the way he would have to do it.

Cross-Q. 119. Did you heat the iron red hot to enable that to be done ?

A. Certainly he would have to heat it hot enough so that it would burn, and then cool it off so that it wouldn't burn any more, so that he could rivet it or clinch it.

Cross-Q. 120. How did you bend the flat plate of steel forming the blade of the reamer into its present rounded shape ?

A. I answered that—over the horn—sometime ago. That is the way we done it.

Cross-Q. 121. You mean over the horn of the anvil ?

A. Yes, sir.

Cross-Q. 122. Was the steel cold, or was it heated ?

A. Certainly it was heated some.

Cross-Q. 123. And this is the job, the details of which you have described, which you would have us suppose, is represented by the charge of ten cents in your book ?

A. Yes, sir.

Adjourned until April 11, 1884, at 10, A. M.

APRIL 11, 1884, 10, A. M.

Examination resumed.

Present, same counsel.

Cross-examination of W. C. Patterson by Mr. Dixon continued:

Cross-Q. 124. I notice in one of your books a charge against Philip Heisley, "Ironing corn shovel plow \$1 00;" when did you do this work for Mr. Heisley?

[Complainants' counsel requests the witness to look at the book and see the entry in question, and requests defendants' counsel, who has the book in his hand, to hand it to the witness for that purpose.]

Counsel for defendants states that the entry in the book, just quoted, is preceded in the same line with the entry of the date; and as the purpose of the question is to test the memory of the witness as to the time of work he did for Mr. Heisley, independently of any association with the entries in the book, he declines to show the witness the entry until after he has answered the question.

Complainants' counsel objects, first: That the respondents should not lay before the court and the witness part of an entry, and suppress the part which they consider material; that they should not seek to introduce evidence of a matter not inquired of in chief, without putting before the court and the witness the best proof attainable on the subject; that they should not inquire of the witness, in a merely collateral matter having no bearing upon the case, the best proof of which is at hand, with the intention of afterwards introducing that proof merely as a basis for attacking the witness' memory; and that if they appeal to the witness' memory of the date on such an immaterial matter, they cannot afterwards introduce any other evidence about it, but are concluded by the witness' answer; and that if they propose to examine the witness upon, or use as part of his deposition a writing made by him, they must put it into his hands and let him examine it before asking him any question about it; and that it is not competent for them to inquire into independent and immaterial matter in the hope that the witness may mistake a date, and with intention, if he does so, of introducing his own writings in the hands of the examining counsel when the question was put.]

A. As near as I can tell, in 1874.

Cross-Q. 125. I suppose the fact that I now hold in my hands the old 1874 book was no aid to your memory in answering the above question, was it?

[Question objected to as entirely improper and uncalled for.]

A. Some, but I have a recollection; I believe that book calls for

1874 and 1875, some, if I recollect right; there is a good deal of that kind of work done in the books for Mr. Heisley, such as corn-hooks, shovel-plows, and so forth, but as to the dates I would not be able to answer.

[Complainants' counsel requests the examiner to note that the book in the hands of the defendants' counsel is No. 1; and that the dates in Heisley's account in it cover seven months in 1874, and nine months and a half in 1875; the Examiner notes the facts.]

Cross-Q. 126. Please look in the other and later account-book No. 2, on page 57, and read to the Examiner the entry on the 5th line from the bottom of the page.

A. "22 Ironing corn shovel plow \$1 00." I ironed that for Chris. Heisley, not for Philip Heisley, but it is in Philip Heisley's account.

Cross-Q. 127. What month is that entry in?

[Objected to as immaterial and incompetent.]

A. As near as I can tell, in June, 1876.

Cross-Q. 128. Is there anything in the entry on that line, or in the line above, or in the lines below, indicating that it was done for Chris. Heisley, while it was charged in the account of P. Heisley?

[Same objection.]

A. Yes, sir; by the way of charging it to C. Heisley. He was a mason, and had masons' hammers.

Cross-Q. 129. Then, as you think there is something in the entry on that line, or in the line above, or in the lines below, indicating that it was done for Chris. Heisley, please point it out to the Examiner in the lines mentioned.

[Same objection.]

A. This is what I told you—the mason-hammer, of course. You asked me that question, and I answered it.

Cross Q. 130. But I don't find such an entry either in the line above, or in the lines below; but I do find, three lines above, the line "19 C

Heisley dressing mason hammer 20," and the next line, " " " [ditto ditto] dressing grubbing-hoe 10," and all the other entries upon that long page, both above and below, having no reference to C. Heisley; did not that "ditto ditto" in the entry under the entry to C. Heisley mean that that also—the dressing grubbing-hoe—was done for C. Heisley, as distinct from all the others on the page for P. Heisley?

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[*Same objection.*]

A. If you would let me explain myself in my own way that would be right.

Cross-Q. 131. Make all the explanations you can.

[*Same objection.*]

A. The Heisley boys had a habit of getting their work charged to the old gentleman. Sometimes we would pick it out, and sometimes we wouldn't. The gentlemen are here themselves to answer.

Cross-Q. 132. You have stated that you did this "ironing corn-shovel plow" in 1874; now, sir, will you look at the book you have produced for 1874 carefully, and point out a single entry in that book in charge for that work?

[*Objected to as incompetent and immaterial, and specially for the reasons stated after question 124.*]

A. I find here in 1874, "the 29th, fixing plow \$1.75." You see that will lead a man's mind. A man's mind will vary from them things.

Cross-Q. 133. You have spent some time examining that book; is that the only charge you can find for the work of ironing a corn shovel-plow?

A. I believe I could find more, if I could just be by myself and look the book over carefully, leaf by leaf; because plows are fixed so much that it is done every year.

Cross-Q. 134. Please to make a still more careful examination, then, if you think you can find it.

[*Same objection, and further, that the examination is a mere waste of time.*]

A. We haven't understood each other exactly by the way of the Heisleys getting their work all charged in one account. Of course that would make a man's mind vary.

Cross-Q. 135. I am now asking you whether you find in the book you are now examining, covering 1874, and a part of 1875, any charge for the ironing of a corn-shovel plow?

[*Same objection.*]

A. I refuse to answer these questions by way of—corn-shovels, cultivators, &c., being all in the line of farming-utensils, of course, tend to confuse the mind, and I am not able to answer them distinctly and correctly.

Cross-Q. 136. In a word, you are unable to find such an entry, and so refuse to answer; is that it?

[*Objected to as above, and on the ground that it is a misstatement of the witness' testimony.*]

A. Yes, sir; just for that kind of a question.

[*Between putting the question and the answering of it, witness examined the book at some length.*]

Cross-Q. 137. I find another entry charged in your book to Philip Heisley, as follows:

"Making pick \$1.00."

When did you do this work for Mr. Heisley?

[*Same request and objections as to question 124.*]

A. Some time back. I don't wish to set any time.

Cross-Q. 138. Why don't you wish to set any time?

[*Same objection.*]

A. Because it comes in the same head of the other—by way of farming utensils—it comes every year—sharpening and steeling grubbing hoes, and—

Cross-Q. 139. In other words it is impossible to remember now the date when such work was done by you eight or ten years ago, except when it becomes associated in your mind with the date of some charge in your books.

A. I believe I have answered that awhile ago, or something similar to that; it comes under the same head.

Cross-Q. 140. Did Mr. Brooks, an agent of the Bell Telephone Company, visit your house or place some time in March, and have any conversation with you or your wife about any of the matters which you have testified to on your direct examination?

A. He came to my house when I wasn't at home, some few weeks ago. He sent for me down at Squire Adams', and I came home, and we examined the books. He asked me whether I had any objections, and then he told me what he wanted to find. He found it—the account that is in the book, which is March 22, I believe, 1876. He told me that I may be called up to testify to them articles; which I told him I could testify to—to what they were fixed for. He asked me for the books, and I gave them to him. That is about the general conversation

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we had, as near—some few other words may have been said, but that takes in the meaning of everything, I believe.

Cross-Q. 141. You say "He found it—the account that is in the book which is March 22, I believe, 1876," did he look very long in your books before he found that entry?

[Objected to as immaterial.]

A. I said "we found it." It might have took ten minutes; it might not have took that long.

Cross-Q. 142. He had seen the books when he had called and you were not at home and your wife there, at least you were so informed, were you not?

[Complainants' counsel objects to asking the witness what Mr. Brooks did when witness was not present.]

A. The books was lying on the table when I came into the house, but I can't testify to anything that I didn't see. I am willing to say, and believe that the books are correct, or rather that the dates of them articles are correct and have not been changed.

[Last clause of the answer objected to by defendants' counsel because not responsive to the question.]

Complainants' counsel requests that the part objected to be struck out.

Defendants' counsel requests that the answer as given by the witness remain upon the record.]

Cross-Q. 143. I did not ask you what parts of your books were correct or had not been changed, but what I ask is as to the fact whether you were informed, either by your wife, or by Mr. Brooks, or by anyone, whether Mr. Brooks had seen, or examined, or made any request about the books in your absence?

A. Mr. Brooks told me that he had looked them over. I couldn't say what his request was, or anything of that kind, more than to me. I suppose it had been talked of, because the books was laying there, and of course he would naturally ask for them.

Cross-Q. 144. When was this—what month, and what day of the month, if you remember?

A. A few weeks ago; in March.

Cross-Q. 145. What did he say to you about the entry you have quoted?

A. He asked me whether that was correct—whether that was the job I done on that machine, for that purpose; and I told him it was.

Cross-Q. 146. You say he carried away the books; what excuse did he give you for taking away the books from your possession at that time?

A. He didn't give any excuse; he asked me for the books, and I gave them to him.

Cross-Q. 147. What reason did he give for desiring to take the books away from you then?

A. He didn't give any particular reason at all.

Cross-Q. 148. Have the books, since then, been out of your possession until produced here before the examiner?

[Complainants' counsel states that the books were brought to Harrisburg by Mr. Brooks to show to him, and that they have remained in his possession ever since.]

A. Yes, sir; from the time he took them away.

Cross-Q. 149. How long was Mr. Brooks at your house after your return?

A. He could have been there fifteen, twenty, or twenty-five minutes; I wouldn't just like to say how long.

Cross-Q. 150. He could have been there most any time; as this is a recent occurrence, if you are able to remember, please state how long he was there after your return before he left your place?

A. He might have been there half an hour, but couldn't have been there longer than that, from the time I came home; it seemed but a short time to me.

Cross-Q. 151. Did he talk about any other subjects besides the matters about which you have testified?

A. Yes; I can't just say the words, and all we talked about; but he asked me about the neighbors and the people around there, and asked me whether I was acquainted with the Heisley's; I told him I was; he asked me what kind of people they were, and I told him they were nice people; that is about the conversation; we spoke about the weather and such like, as men will when they get talking.

Recess until 2, P. M.

Cross-Q. 152. Did you and Mr. Brooks have any conversation about any other entries in your books, of charges against any one else besides the Heisleys?

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A. Yes, sir; he asked me whether I done the work for the people up and down the valley and as far as Marysville; I don't know, but it seems to me he mentioned Adams' name.

Cross-Q. 153. What was the charge in your books relating to work for Mr. Adams?

[*Objected to as immaterial and as matter not opened on the direct examination.*]

A. Making twenty-nine bands.

Cross-Q. 154. Tell, as near as you can, the conversation between you and Mr. Brooks about those bands?

[*Same objection.*]

A. He went down to Adams' and then he came back and asked me whether he dared see the book. He asked me whether I had made any bands for Mr. Adams. I told him we had; and we went and looked. He asked me whether I had been there while he was fixing this here run that these here bands were for; I told him I had; that was about all the conversation.

Cross-Q. 155. Please point out to the Examiner the entries in the book that you and Mr. Brooks found on that occasion?

[*Same objection.*]

A. Here is one of them, and this is the same.

[*Witness points out the following entries:*

"A. Hipple and Adams Esqs.
Aug. 20, Making 29 bands 1.70

Also on a preceding page the following:

"Abe Hipple and Adams.
Aug 20, 29 bands 1.76"]

[*Witness continues.*]

I changed it over to start a new page.

[*The Examiner marks both of said pages with his name and the date for identification, at request of defendants' counsel.*]

Cross-Q. 156. I notice the date 1874 on the adjacent entries. What year were these entries of charges to Adams made?

A. In 1874, I believe; that was the year I came there.

Cross-Q. 157. What else was said in the conversation with Mr. Brooks about these bands?

[*Same objection.*]

A. I don't know as there was much more said. There could have some other things been said, but they ain't in my mind now.

Cross-Q. 158. This is a very recent occurrence; please tell us generally what was said about these bands, and how you come to talk about this entry especially?

[*Same objection.*]

A. I have told you about all I know about it at the present time. You will find that answer above, I guess.

Cross-Q. 159. What reason did Mr. Brooks give for speaking of this entry of work done for Mr. Adams?

[*Same objection.*]

A. I can't answer that.

Cross-Q. 160. Please describe the shape of those bands you made for Mr. Adams.

[*Same objection.*]

A. Something like a hub-band. Some hub-bands are inch, some are three quarter, and some are eight-inch. These bands were somewhere about six inches. I can't tell exactly, maybe more, and maybe less.

Cross-Q. 161. Do you mean six inches length of band or six inches diameter?

[*Same objection.*]

A. I mean six inches in diameter.

Cross-Q. 162. What was the purpose for which these bands were made?

[*Same objection.*]

A. To put on logs to run the water down to his barn from his spring.

Cross-Q. 163. How were the pipes united by these bands?

[*Objected to as above, and because the witness does not appear to have any knowledge on the subject.*]

A. I believe that as far as I recollect—I was there when he was going to do it, and he told me how he was going to do it—and my recollection is that one end was made smaller than the other and put into it. I believe that was the way. I went down to his house and barn on purpose to see about these bands; whether I took any of the bands down with me I can't say. It runs in my head that I did, but I won't be certain. I am certain I was there.

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Cross-Q. 164. Then Mr. Adams was putting in these log pipes to run the water down to his barn from his spring at that time ?

[*Same objection as to interrogatory 154.*]

A. Yes, sir; he was working at it.

Cross-Q. 165. This was William Adams, called frequently "Squire" Adams ?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 166. This Mr. Hipple was an old gentleman living with Mr. Adams on the place; was he not ?

[*Same objection.*]

A. Yes, sir; but he lived by himself, in his own house. He had an interest in the place.

Cross-Q. 167. If I understand you aright, the two sections of pipe were united by these bands by bringing the ends of the pipes together, inclosed or driven in the band, so that no reamer would be used ?

[*Same objection.*]

A. Yes, sir; that is about it.

Cross-Q. 168. After this conversation with Mr. Brooks, when did you next have a conversation with any one representing or interested in the Bell Company.

A. When he took the books away.

Cross-Q. 169. When was that ?

A. Next day.

Cross-Q. 170. Then he came again to see you the next day after his first visit.

A. Yes, sir.

Cross-Q. 171. How long was he there on that occasion ?

A. Long enough to get the books and ask me whether I would come to Harrisburg.

Cross-Q. 172. Was he alone, and did he come there in a buggy ?

A. Yes, sir; I believe he was. He came there, and I don't know whether he was alone or had a driver, but he was alone in the house, anyway. I believe he did come in a buggy. He might have had some body along, too. I won't be sure on that question, because I was busy in my shop, and I didn't pay much attention.

Cross-Q. 173. If you were busy in your shop, how are you able to state that he was alone while in the house?

A. My wife not being there of course. We went into the house, and I didn't pay much attention, but gave him the books. The conversation we had was about my coming to Harrisburg; and that is about all of it, as near as I can tell.

Cross-Q. 174. There may have been other conversations, then, that you don't recall?

A. Not alluding to the books or anything that way, that I mind of, or about the suit, or me coming to Harrisburg, that I mind of.

Cross-Q. 175. When did you next have a conversation with any one representing or agent for the Bell Company?

A. In Harrisburg, that week some time; I won't say whether it was the next day, but it was in that week, to the best of my knowledge.

Cross-Q. 176. Who were present and took part in the conversation?

A. This gentleman, (pointing to counsel for complainants). I believe Mr. Brooks was there—I believe that is his name. About the other gentleman in and out, I don't know.

Cross-Q. 177. Where was this interview held?

A. In the Bolton House; I believe that is the name.

Cross-Q. 178. How came you to go down to have this talk with them?

A. This gentleman asked me to come.

Cross-Q. 179. What gentleman?

A. Mr. Brooks, I believe, is his name.

Cross-Q. 180. When did he ask you to come to the Bolton House?

A. When he was there the last time; that is, the time he got the books.

Cross-Q. 181. Was there any one with you, either on the road or when you went to the Bolton House?

A. No, sir.

Cross-Q. 182. What reason did Mr. Brooks give you for asking you to come down to Harrisburg to the Bolton House?

A. I don't know as he just gave me any reason referring to anything in particular—more than asking me whether I worked for this man or that man, which I answered before.

Cross-Q. 184. Then when Mr. Brooks, on his last visit, asked you to come to the Bolton House he did have some conversation with you

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about matters—whether you worked for this man or that man, &c.; did he?

A. That is, at the Bolton House; yes, sir.

Cross-Q. 185. But you don't mean that it was at the Bolton House that he asked you to come to the Bolton House, do you?

A. No, sir; I explained it plain enough to him. It is there. We had a conversation whenever we met. I am sure that is plain enough. I don't want to get out of anything. I want to tell just what I know.

Cross-Q. 186. In cross-question 182 I asked you, "What reason did Mr. Brooks give you for asking you to come down to Harrisburg to the Bolton House?" You replied: "I don't know as he gave me any reason, referring to anything in particular—more than asking me whether I worked for this man or that man, which I answered before." Do I now understand you to say that there was no such conversation when he asked you to come to Harrisburg?

A. Didn't I tell you that he asked me about Heisleys? Didn't I tell you that he asked me about Adams', this afternoon?

[Question repeated.]

Question objected to as obscure and misleading. If it refers to one particular visit to the exclusion of others, that should be pointed out.]

I don't understand, and can't answer that. I don't understand what he wants; and I don't wish to answer anything that I don't understand.

Cross-Q. 187. You understand when Mr. Brooks asked you to come to Harrisburg; don't you?

A. I told him I did.

Cross-Q. 188. You understand the question: What reason did Mr. Brooks give for asking you to come down to Harrisburg to the Bolton House; don't you?

A. He asked me to come down there. I answered that. And then, when we got there, I answered him about his asking me whether I worked for this man or that man. If he goes back over it he will find that I answered everything correctly, so far as I know.

Cross-Q. 189. You understand what you meant yourself, when you answered that question, saying: "I don't know as he gave me any reason, referring to anything in particular—more than asking me whether I worked for this man or that man;" don't you?

[The further continuance of this interrogation objected to because it is merely badgering the witness and wasting time, and because the witness' meaning is perfectly clear.]

A. I can't answer that question; I can answer him how many times I met the gentleman, and the conversations between us; the times I don't know, but we had a conversation every time I met him; I met him three times up the valley, where I live, and twice in Harrisburg, that I mind of.

Cross-Q. 190. And, as I understand you, you had conversations with him each of these five times, but you are unable to remember the details of these conversations, or at which of the conversations particular things were said?

A. Yes; I wouldn't want to say, because I couldn't tell the conversation at each time that we had; of course, there was talk about whether I was willing to be qualified to the books; I told him I would, as near as I could.

Cross-Q. 191. How came you to go the second time to Harrisburg to have a talk with him?

[*Question objected to because it assumes that the witness went to Harrisburg the second time for the purpose of seeing Mr. Brooks; whereas, that does not appear.*]

A. I went to get an account out of my book; that is the book, (indicating book No. 2;) it was not concerned with these other books, nor with the testimony which I have given.

Cross-Q. 192. Who were present at this interview?

A. When I went to the hotel there wasn't anybody with me; I staid in Harrisburg that night; I had some business at a hardware store; and I staid there all night with a friend of mine, Charley Anderson, a relative on my brother's side by marriage.

[*Question repeated.*]

Before re-reading the question, and after the entry of the words "question repeated," witnesses says:

I am not through yet. I went to the hotel next morning and they weren't there then, and I went there several times before I left for Marysville. Then I went up to Marysville on the ten and came back on the twelve train, and then I went to the hotel and there was nobody there, and then I went to the depot and met Mr.—Comfort, I believe is his name—and asked him if he would let me have that book that I mentioned, to get that account out of. I walked around in Harrisburg with a man by the name of Champion, who met me there on the street. At the time I went back to Marysville Mr. Beers was with me. About

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all the conversation was between Mr. Beers and Comfort. They had conversation. I was looking at my book. I was at Harrisburg once after that. I went there that time. Mr. Beers was there that time. Mr. Brooks was there that time. He says: "I understand that you and Mr. Fenn had a conversation at your shop." I told him we had. I told him the conversation as near as I could. It appears that somebody had told him that Mr. Fenn had been there. I don't know where he got it. He might have got it from almost anybody. I told him the conversation that Mr. Fenn and me had, and he said that was right, that he didn't want to do anything but what was fair. That, in my own words, is about what was said. I am not able to give the times at which these things were said, that is when any particular thing was first mentioned. I was willing to be qualified to my books, and I thought that was all that was required. So I never committed anything to memory that was said. That is about all.

Cross-Q. 193. Mr. Comfort and Mr. Beers have been acting for the Bell Company in matters relating to the evidence, have they not?

A. As far as I know. You will have to get the information from them; I can't explain that to you.

Cross-Q. 194. You have stated that "At the time I went back to Marysville Mr. Beers was with me; about all the conversation was between Mr. Beers and Comfort; they had conversation;" did Mr. Comfort go with you and Mr. Beers up to Marysville, or did you and Mr. Beers go alone up to Marysville?

A. Me and Mr. Beers went down to the depot together, I believe; when we got to the depot it appears that I got on one car, and Mr. Beers got on another; when we got to Marysville Mr. Beers was on the train—got off of the train.

Cross-Q. 195. You have not yet told me whether Mr. Comfort was along?

A. He was not along, as I seen.

Cross-Q. 196. How are you then able to state, as you have above, "I went back to Marysville; Mr. Beers was with me; about all the conversation was between Mr. Beers and Comfort; they had conversation"?

A. I couldn't tell him what the conversation was, because I didn't hear it. I heard them talking, but you could have conversation in a room, and not hear what was said, you know.

Cross-Q. 197. Did Mr. Comfort at any time after you first met Mr. Brooks, a few weeks ago, visit you at your place up in the valley?

A. Yes, sir; he came to the shop there and asked for Mr. Brooks; and which was the best way to get over the mountain, and things of that kind.

Cross-Q. 198. How many different times did you have talks with Mr. Beers relating to this case?

A. It might have been three times, and it might have been four times; but I don't think it was more than that.

Cross-Q. 199. You have spoken of a conversation that you had with Mr. Fenn; was that William Fenn, Esquire?

A. I believe he goes by the name of William Fenn.

Cross-Q. 200. Did you not in a conversation with Mr. Fenn refuse to tell him the dates of charges made, and tell him in substance, that you wouldn't talk on the subject at all until you had first gone to Harrisburg and had a talk with Mr. Storrow?

A. I told him that I would rather not talk on the subject at that time. Now, if he will let me tell all that transpired, in my own way, I will give him all the information I can.

Cross-Q. 201. I will ask you why you made the distinction; and while talking upon these matters with Mr. Brooks, Mr. Comfort, Mr. Beers, and Mr. Storrow on the one hand, you declined to give any information as to your knowledge to Mr. Fenn.

A. I thought in my own mind that it would be the best place to give my testimony when I was sworn; which I told Mr. Fenn—that I would be willing to tell all I knew. We had conversation in other ways about it, and about going to Harrisburg, and I didn't know whether I could get the books or not; and I thought best to say nothing about it, being busy; he asked me then, whether I could tell him the dates of them there articles which is mentioned in them books; I told him I could tell him, but I would rather not at that time. There was other conversation; we talked about us being always friends; I can't give the exact words; I told him then that as for me, I didn't have any preference for sides. That is about as near the conversation; there was other words that I am willing to answer if Mr. Fenn wishes, and this other gentleman; that is, if I remember them.

Cross-Q. 202. Didn't you, in the first part of that conversation in the little office, say to Mr. Fenn, in substance, that you couldn't fix the dates then without the books?

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A. No, sir; I told him that I didn't want to tell him; he asked me the question two or three times, and he asked me as he was leaving the shop, before witnesses; I told him I could tell him if I would want to, but I didn't want to tell him. Mr. Franklin Rinehart was by and Mr. John Newbraugh; Mr. Ob. Miller was with him in the room when we were talking, but whether he was just present at that time or not I can't tell. He came along with Mr. Fenn. I told him, in the presence of Mr. Miller, too, that I didn't want to tell him, because I wasn't on oath, and didn't want to bother about it until I was; that is about all. They had some other conversation there, too, but I was busy; and that is about all I paid attention to and remember at this time.

Cross-Q. 203. Did not the conversation with Mr. Fenn commence while you were alone together, and then continue after Mr. Miller came in?

A. It could have commenced in that way—just as I told you; I don't remember the exact facts—the way it commenced; if Mr. Fenn understood me in that way he understood me wrong, at any time in speaking in the shop. Understand there is no door to that room; it is inside of the shop, and right close to the fires; I told them gentlemen if they heard what I said when he left they should bear it in mind.

Cross-Q. 204. Is this the conversation with Mr. Fenn which you stated in answer to cross-question 192 referred to, that you reported to Mr. Brooks, after which Mr. Brooks said that was right.

A. It might not have been in them same words, but about the same meaning; I didn't know that I would have to testify to anything outside of the books or I would have kept a memorandum of the talk that was talked outside of the books.

Cross-Q. 205. You have not yet explained the practical preference you have shown in giving full information to the complainants' side, and withholding all information in your possession, or that you claim was in your possession, from the other side; will you now do so, if you are willing to make the statement?

[Objected to for the reason that the witness has already fully stated his reasons for his action.]

A. I am not willing, for there is nothing in my mind at the present time; therefore, I am done.

Cross-Q. 206. How long have you been here in Philadelphia, and when did you leave Marysville last?

A. On Tuesday morning, I believe, on the 8 o'clock train; I arrived here in the afternoon sometime, and have been here ever since.

[The examiner notes that the examination began on Thursday morning and it is now Friday afternoon.]

Adjourned until April 12, 1884, at 10, A. M.

APRIL 12, 1884, 10, A. M.

Examination resumed.

Present, same counsel.

Cross-examination of W. C. Patterson, by Mr. Dixon, continued:

Cross-Q. 207. You dropped a side remark yesterday morning, while you were examining your books for the entry of a charge for ironing corn shovel-plow, that you had other books; what books did you refer to?

A. I didn't just mean one book; I have several books at home; just as I would fill one book I would start another one. I answered that question yesterday about as distinctly as it could be answered.

Cross-Q. 208. What bearing did these other books have upon your ability to find an entry in 1874 or 1875, for any work done in ironing a corn shovel-plow?

A. It merely goes to show that that kind of work is done every year, such as corn-plows, cultivators, shovel-plows; of course, a man's mind will vary on such articles.

Cross-Q. 209. Yes; but what bearing did these other books have upon any charge for ironing corn-shovel-plow in 1874 or 1875, and your inability to find it in this book?

A. I told him all I can tell him about that.

Cross-Q. 210. Yes; but tell me something which caused you to make that remark about your other books while searching for an entry made in 1874 or 1875?

A. I have told him all I can tell him about that.

Cross-Q. 211. You decline to make any other statement about that; do you?

[Question objected to for the reason that the vague and general inquiry has been sufficiently answered, and that if the examining counsel wishes any information upon any particular point, he can have it by asking for it and directing the witness' attention to it.]

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A. I answered it as well as I can.

Cross-Q. 212. I find, on the page which you first referred to on your direct examination, in the first account-book, No. 1:

"P. Heisley cts
Old bill 65"

What does this refer to?

A. It could have been transferred from some pass-book or something. It couldn't have been much of a bill, because I didn't come there much before that, in 1874; or it could have referred to a part further back in that book, or to a leaf that I tore out, [examines book.] I see here is a leaf that is torn. I didn't look it up. It might be back here somewhere, [witness examines book again.] I see here is a leaf torn out in 1874. How it was torn out I don't know. The children might have torn it out.

Cross-Q. 213. This leaf to which you have referred is torn out of the book previous to the leaf first cited by you on the direct examination; is it not?

A. Yes, certainly; but that don't say that that was there; nor I don't mean that it was there.

Cross-Q. 214. Besides the leaf you have mentioned as torn out, there are two other leaves in the book preceding the page cited by you on your direct examination, that have portions of the leaf torn away; are there not?

A. Yes, sir; they are torn away, some.

Cross-Q. 215. Are not the entries in this book, as regards dates, all mixed up; for example: on the tenth leaf from the beginning, on the first page thereof, do you not find

" 1872,					
March 25	Paid M. Newman .	66.00	08		3
	Susan Hiser ..	.	.	44	
	Fixing hinges .	.	.	30	2
1874 May 5 John Frymyer					cts
	One shoe .	.	.	.	.12
	Grab Hooks .	.	.	.	75
	Grubbing Hoe .	.	.	.	25
	Chains .	.	.	.	45
	Lock Lever .	.	.	.	10
	One Hoe .	.	.	.	15
	3 Shoes .	.	.	.	3.00
					<hr/>
					\$4.82

Christ Hysley

Sept 16. 2 Mason Hammers 36 "

and immediately at the top of the next page over the leaf the next entries being:

"January 30, 1872, Deposited with Powell & Co. money for which we have rec'd, a bill of deposit dated as above, \$100.00.

1874 William Hartman Dr.

Apr 28 Horse Shoeing 1.50 "]

[The Examiner states that he copied the above entries, the first part being all the entries on the first page pointed out by defendant's counsel, below the fourth line thereof, and the part quoted from the second page over the leaf being a copy of all the entries contained on the first six lines of said page.]

A. Anything outside of 1874 don't belong to my account; which—the book—I got from Mr. Neyhart, and that writing was in. I commenced working in the spring of 1874. There could be articles charged in on them pages not meaning that date.

Cross-Q. 216. How happens it that when the entry to William Hartman, April 28, 1874, appears on the last page of the leaf, the entry to "Christ Hysley," made September 16, was put on the previous page?

A. It was done in that way, I suppose, to save paper, and in that way.

Cross-Q. 217. Where, during the years you were working there, the Heisleys, and others you did work for, happened to pay you at the time they had some little job of work done, did you put it on the books or simply put the money in your pocket?

A. I never received much money from the Heisley family in that way—never from the old man at all in that way. The boys may have paid that way for some few articles. If they did, it was small.

Cross-Q. 218. The question I asked is: when you were paid at the time for some little job of work, did you put it on the books?

A. No, sir; very seldom. I don't know of any articles charged in that way. There might have been a few articles charged in that way and then credited. As a general rule we don't make any charge when they pay.

Cross-Q. 219. Is it not the most that you can honestly say that you don't now remember, after the lapse of eight or ten years, whether you happened at any time to do any little job of work for any of these parties which they may have paid for at the time?

[Question objected to as vague and obscure and ambiguous. It should mention the parties referred to, the witness having already stated that he was sometimes paid in cash and at the time by some parties, but never by Philip Heisley.]

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Protest is made by defendants' counsel against the above obvious attempt to instruct the witness under a guise of an objection.

Complainants' counsel states that the objection was purposely dictated to the Examiner in a low tone of voice, with the intention that the witness should not hear; but that if he thought it necessary, he should not hesitate to have an ambiguous question explained to the witness, in order that he might understand precisely what he was answering.

Defendants' counsel states that complainants' counsel is seated at the side, and the witness at the end, of a table only about four by six feet in size, both facing the Examiner.

The Examiner asks the witness whether he heard objection of complainants' counsel, and witness replies: "No; I only heard the word 'objection.'"]

A I believe I answered that question, didn't I? Chris Heisley is concerned in that, I believe; I can remember of him paying me at the time for some few articles, such as mason's hammers and mason's tools; but not the old gentleman.

Cross-Q. 220. In making your charges in your books against Philip Heisley you have stated, I believe, that some of the charges were for work done for other Heisleys; can you always distinguish now, so many years after, which of the charges entered against Philip Heisley were done for other Heisleys?

A. They all belong in one family that got work done at my shop; I explained that question before; therefore, I have given him all the information I can, and necessary.

[Question repeated.]

Chris would come to the shop, and Bill would come to the shop, and Philip would come to the shop, and Pete would come to the shop, and some others of the younger boys would come to the shop; I can't just mention their names. When Chris would get anything done I would charge it "C. Heisley" sometimes, and other times I would just not say anything about it; that is about the way the work was done; and they were all in one family, and it was all done in the old gentleman's name; the boys would see it paid; sometimes they would do work for me—hauling and so forth. I believe that covers everything that I know at the present time.

Cross-Q. 221. The question is, whether you can now remember which of the members of the family the different articles were made for?

A. Some of them I can, such as mason-hammers. Chris was the only member of the family that worked outside of the farm.

Cross-Q. 222. The question is: Can you tell from these entries which of the Heisleys the work was done for at the time?

A. I told him a while ago, some of them I can. As to all, I would say no. Chris was the only one that had work of his own done at my shop.

Cross-Q. 223. You did work for the Heisleys every day or two during 1874 and 1875; did you not?

A. Yes; on an average every week since I am there.

Cross-Q. 224. Will you read to the Examiner the dates of your charges to Philip Heisley; for example, on the first page cited by you in book No. 1, on your direct examination?

A. "June 1, June 4, June 8, June 8, June 8, June 9, June 10, June 12, June 29, July 2, July 2, July 6, July 10, July 13, July 21, July 21, July 25, July 29, July 29."

Cross-Q. 225. Will you read to the Examiner as another example, the dates of the entries on the page of Heisley's account commencing with Sept. 16, 1874?

A. "1874, Sept 16, Sept 17, Sept 18, Sept 22, Sept 26, Sept 28, Sept 30, Oct 1, Oct 5, Oct 8, Oct 22, Oct 22, Oct 26, Oct 28, Oct 30, Nov 18, Nov 21, Nov 27, Nov 27, Nov 29."

Cross-Q. 226. What is the date of the entry in the last line at the bottom of the last page cited by you on your direct examination in book No. 1?

A. October 8.

Cross-Q. 227. What is the date of the first entry for work done on the first page of book No. 2, cited by you on your direct examination, to wit: page 55?

A. November 10.

Cross-Q. 228. In book No. 1, turning over the leaf following the last page cited by you in said book on your direct examination, do you not find evidences of the two following leaves having been cut out?

A. Yes, sir. They could have been cut out before I got it; but I am satisfied in my mind that I didn't cut them out. I noticed that in the book when I examined it. That is about all. That could have been cut out before there was any writing done on them. My wife could have cut them out to write a letter on. When we came there, there was no store there. Of course, she could have cut them out in that way, by not having any paper. But when I leafed over the book when Mr. Brooks came there, I noticed that the leaves had been cut out. That is about as

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well as I can explain myself. I am perfectly clear in mind of trying to deceive anybody with my books.

Cross-Q. 229. Both pages facing the place where the leaves are torn out bear the date 1875; do they not?

A. Yes, sir.

Cross-Q. 230. Turn over the six following leaves, and you find evidences of eight or nine leaves having been torn out; do you not?

A. Well, I explained that. Yes, sir.

[Complainants' counsel states that having been out of the room for a few moments when question 227 was put and answered, he objects to it as liable to convey an incorrect impression, inasmuch as Nov. 10 is not the first date nor the first entry on that page.]

Counsel for defendants states that Nov. 10 is the date of the first charge for work done, which was the important matter, as the books in their present mutilated condition show no charge for work done from Oct. 8th to Nov. 10, and all above the entry of Nov. 10th is written in an entirely different handwriting.

Complainants' counsel objects to the intimation that there is the slightest appearance of mutilation in any of the accounts relating to the business of this witness.]

Cross-Q. 231. The narrow edges left in the book where these pages are torn out, bear evidences of writing on them; do they not?

A. There might have been some kind of scribbling on it, but I don't see any words there. There is writing there, but no words.

Cross-Q. 232. The first page facing where these last leaves are torn out bears the date 1874, with entries ranging from June 26 to September 19 inclusive; does it not?

A. Yes, sir; I believe this is correct.

Cross-Q. 233. The opposite page facing where these last leaves are torn out is filled with entries, commencing with the date, August 24, but contains nowhere the entry of any yearly date; does it?

A. It has no date of the year; you might transfer it to that man's name; that would lead you to the year; the first date on the page is August 24.

Cross-Q. 234. What man's name?

A. I suppose that means Alva—I don't exactly spell that neither—that means Alva—one, and the other I can't make out right what that is; that is the man's name, whosever name it is; I know everything has been settled up correctly so far as I know. I know the man's name now; it is

John Sitterly; that is the reason that Alva was stricken out; it had been on that page, and was stricken out; that is what bothered me; that capital letter, [pointing to the first letter of the name "Sitterly."]

Cross-Q. 235. Turn over the leaf following the place where these last-mentioned leaves were torn out, and state whether you do not find evidence of two or three leaves having been torn out there.

A. Yes, sir.

Cross-Q. 236. And you find four or five places after that in said book No. 1, where, in some cases, a number of leaves, and in other places parts of leaves have been torn out; do you not?

A. Yes, sir; there are pages and parts of pages torn out there.

Cross-Q. 237. The lower half of the leaf in book No. 2, facing the first page in which is the Philip Heisley account, is also torn out, is it not?

A. Yes, sir; but Heisley's name couldn't have been in there; please mention "carried from old book."

[*Complainant's counsel requests the examiner at this spot to copy upon the record the first five entries of the Heisley account referred to in preceding question, in order that the court may understand the testimony, and see what it is that the witness has referred to in his answer. The lines are as follows:*

"1875 Philip Heishley,

55

	\$	cts
in account with W. C. Patterson Dr.		
Oct 16 carried from old book	40	27
Nov 10 Setfour shoes		40
16 Putting plate on pole		25"]

Cross-Q. 238. How happens it that when the entries for work done from November 10 on in the Heisley account appear in the second book No. 2, that there appears written across the inner margin of the last page cited by you on the direct examination in book No. 1, the entry "Nov 23 Pea Heisley dresing grubbinghoe 10?"

A. By the page being full the other way, I suppose; that's all I can see.

Cross-Q. 239. Yes; but why didn't you write it in the new book, to which you claim you had carried the old account, and made entries for work done November 10, November 16, November 17, November 22, instead of going back to the old book, from which you claim the account had been transferred, and writing it on the margin of the October accounts?

A. I notice it ain't counted in the account at all.

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Cross-Q. 240. What I ask is why you wrote it on the page of the old transferred account in the old book, instead of in the account which you claim to have already opened in the new book, with the entries already made for work done November 10, November 16, November 17, and November 22?

A. That I don't know at the present time. When it was done, it was done all right; but I answer that the reason I don't know. It could have been a mistake somehow. We are all liable to make mistakes.

[*Counsel for defendants here objects to the consideration of the books produced and the entries therein referred to by the witness on his direct examination, because of the slovenly manner in which such books were kept, because of their mutilated condition, and because of their utterly untrustworthy character.*

Complainants' counsel objects to the statements in the foregoing objection, upon the ground that they are directly contrary to the facts.]

Adjourned until Monday, April 14, 1884, at 10.20, A. M., at the request of defendants' counsel, the session having been prolonged until a quarter to two, P. M., without recess.

MONDAY, April 14, 1884, 10.20, A. M.

Examination resumed.

Present, Mr. Storrow for Complainants, and Mr. Dixon and Mr. Jacobs for respondents.

Cross-examination of W. C. Patterson by Mr. Dixon continued:

Cross-Q. 241. You stated, in answer to direct question 21, that you saw the work going on at Mr. Heisley's when they were boring the logs and digging the ditch. Describe the work that you saw going on at that time?

A. Well, there were logs brought there for that purpose; and down at the spring I saw they were digging a ditch; and we were talking, as neighbors will do; and they said that the pipes had been leaking, and they were going to fix it, so as to not have any bother with it. That is about the way I saw it.

[*The last part of the above answer objected to because it was a volunteer statement of hearsay testimony, and not responsive to the question.*]

Cross-Q. 242. What was the distance from Mr. Heisley's spring to his spring-house?

A. Indeed, I never measured it.

Cross-Q. 243. You stated that you made a habit of going to the Heisleys' as friends and neighbors. Tell us what was about the distance from the spring to the spring-house.

A. It could have been 150 feet or a little more, or a little less—along there.

Cross-Q. 244. It was about that, was it?

A. I set the length as near as I can tell.

Cross-Q. 245. How were they boring the pipe; on the ground or up on trestles?

A. They bored them in the barn floor, I think. I didn't exactly see them boring. I seen them around there, and seen the shavings, and that is what they told me they had been boring. Of course, the shavings would not have been there if they had not been boring.

[*The hearsay statement in the above answer objected to.*]

Cross-Q. 246. Then, as I understand you now, you yourself didn't see them boring logs at that time.

A. Well, there is some faint idea of me seeing them, but I won't say that for certain; but I know that is what they were doing for that purpose.

Cross-Q. 247. Were these logs hewed on their surface or freshly peeled, or did they still have the bark on them?

A. I believe they had the bark on.

Cross-Q. 248. How many lengths of pipe were bored?

A. I don't know.

Cross-Q. 249. About how many?

[*Complainants' counsel objects to the question as asking for guess-work.*]

A. I don't know; that is as near as I can tell.

Cross-Q. 250. Was there enough to reach from the spring to the spring-house?

[*Same objection.*]

A. I don't know.

Cross-Q. 251. How were they digging the trench—with what tools?

A. Shovels and hoes.

Cross-Q. 252. Any picks?

A. Well I don't know whether there was a pick there or not; that is about the same as a grubbing-hoe. That I have answered.

Cross-Q. 253. Describe the grubbing-hoes you saw in use there.

[*Objected to as immaterial and a mere waste of time.*]

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A. I can't describe them. Grubbing-hoes are all alike—one bit on each end. No man living can describe them.

Cross-Q. 254. How long was the iron pick-like part?

[*Same objection.*]

A. About the length of other people's hoes.

Cross-Q. 255. How long is that?

[*Same objection.*]

A. I don't know as I ever measured a hoe in my life. I would judge some hoes to be about eighteen inches long, some fifteen.

Cross-Q. 256. How deep was this trench which you saw dug.

A. It could have been fifteen inches; it could have been deeper than that or it could have been less than that. I am only sorry I didn't measure these things for you, then maybe I could have told you.

Cross-Q. 257. I didn't ask you how deep it could have been, but the fact as to how deep it was?

[*Objected to as already answered.*]

A. I answered him exactly as I can.

Cross-Q. 258. Then, as I understand you, it was about fifteen inches deep; and if this is not so, state how deep it was?

[*Objected to as a misstatement of the witness' testimony and because the witness' memory is already exhausted.*]

A. Whether it was more or less I won't say, because I don't know.

Cross-Q. 259. How long was the trench you saw dug?

A. I didn't measure that?

Cross-Q. 260. I don't suppose you did, but will you give your best recollection?

A. That would be only guess-work, therefore I don't wish to set any length.

Cross-Q. 261. Then you don't remember any of the details of what you saw on that occasion?

A. No man can remember exactly what he has seen—the length, breadth, and depth that way, just going along. If I had thought I would be called up as a witness, I would be more able to tell.

Cross-Q. 262. You have a distinct recollection of the shavings; but they were not at the trench, but in the barn; were they not?

A. That is something that you won't have to measure the depth, breadth, or anything that way.

[*Question repeated.*]

They were not at the trench? Yes, sir; they were about the barn—in the barn.

Cross-Q. 263. Who were doing this work?

A. The Heisley boys.

Cross-Q. 264. Give their names?

A. I can't give their names exactly; some worked at one time and others at other times; they all worked among each other there. To my recollection I don't know which were working at it.

Cross-Q. 265. Then you saw them working at it at different times, did you?

A. As to any time I can't set it; as to giving the particulars I can't do it.

Cross-Q. 266. While you may not be able to remember the time, tell us the names of some of the boys you saw working at this piping or trench at one time or another?

A. Well, there was Philip and Joe; I wouldn't be positive whether I saw Christ or Pete working at it or not, but I am positive of this; that they were about there on Sundays, and were at home; they could have worked at it, too. I can't give him the facts just as it happened.

Cross-Q. 267. What did you see Philip doing?

A. I seen him down on the run; I suppose he was digging.

Cross-Q. 268. You don't remember then what he was doing, but suppose he was digging; is that it?

A. Yes, sir; with five or six boys around a place that way, one will be here and another there; and as to keeping all their names in a man's mind it would be impossible; I have answered everything as well as I can, therefore I am done with that subject.

Cross-Q. 269. You remember that you saw Joe working; do you remember what he was doing?

A. Not exactly I don't; he was working, but not just at one place. They go from one place to another and work—work at different places. I know I talked to Joe there, but I don't remember what he was working at. You know when they see you coming they naturally will come towards you, and then you don't see them working—don't see exactly what they were doing.

Cross-Q. 270. Do you mean to be understood that the old gentleman, Heisley, was not about, at all?

A. The old gentleman could have been there, but I didn't see him

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working. The old gentleman grubbs in the fields around. He might have grubbed there when I wasn't there.

Cross-Q. 271. Have you had any talk with anyone, or has anyone said anything to you, about any of the matters concerning which you have testified, during any of the recesses or adjournments, since you first took the stand and began to give your testimony in this case?

A. No, sir, not straight. Do you mean as to this testimony? Of course, the suit has been talked about; but as to me—to bringing anything up in my mind, like this; no, sir.

Cross-Q. 272. With whom have you had conversation about the suit, during these times?

A. Well, the boys that are here—"well, how are you getting along?" I told every one of them that I was cautioned not to say anything.

Cross-Q. 273. What boys do you refer to; give their names?

A. The Heisley boys.

Cross-Q. 274. Were they brought down to Philadelphia with you last Tuesday?

A. No, sir; they came on one train, and I on another. They came after me.

Cross-Q. 275. In these talks with them, which you have referred to, did you tell them anything as to how you were getting along, or about the testimony?

A. I believe I did tell them that I was getting along slow, and didn't know when I would get through; that I was tired, and wanted to go home. But as to the suit, or to testifying or anything that way, I don't mind saying anything that amounted to anything that I know of.

Cross-Q. 276. Did you say anything to any of them about your books, or anything connected with your books?

A. I don't believe I did.

Cross-Q. 277. Don't you know whether you did or not?

A. I don't know as I did.

Cross-Q. 278. Do you know that you didn't?

A. I don't believe that I did.

Cross-Q. 279. But you are not positive?

A. I don't think of anything now that I said to them.

Recess until 1.45, P. M.

Re-direct by Mr. Storrow:

Q. Q. 280. I wish to inquire whether you do or do not positively

and distinctly remember that you made this instrument—"Heisley Reaming-Bit." What is the fact about it?

[Objected to because leading, and because not proper re-direct examination; and also because calling for a mere reiteration of statements made on the direct examination.]

A. Yes, sir; I do.

Q. Q. 281. I ask you whether you are or are not positively sure that the entries copied into your answer 27 are the entries of the work of making this bit and fixing the boring-machine which you have testified about?

[Objected to as grossly leading, and obviously intended to instruct the witness as to the answer intended; and also because not proper re-direct examination.]

A. I am sure they are.

Q. Q. 282. Is that Heisley reaming-bit a nice and careful piece of work, or a very rough piece of work?

[Same objection.]

A. A very rough piece of work.

Q. Q. 283. To judge from the looks of the wooden handle, what kind of a tool should you say it was made with?

[Objected to because calling for guess-work.]

A. I would say it was made with an ax.

Q. Q. 284. If I understand your testimony correctly, Mr. Heisley came to you to repair the boring-machine, and at the same time brought some materials; and what you did about the reaming-bit was to cut a piece out of a saw-blade, bend it, and perhaps do a little else, he helping you, he doing the rest of the work on the reamer; is that the fact or not?

[Same objection as to re-direct question 281, and protest is made against this method of putting the words in the mouth of the witness on the re-direct examination.]

A. That is correct.

[Complainants' counsel now requests the Examiner to add together the footings found at the bottom of each page of the Heisley account in book No. 1.]

The Examiner states that the third page of the account has two footings—one 6.91, and the other 6.83; that using one of those footings the total is \$40.25, and using the other the total is \$40.17.

Complainants' counsel also requests Examiner to copy upon the records the dates of that part of the third page of said account, from October 1st to

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the end of the page, and the dates of the first six entries of the fourth page; also, the dates of the Heisley account, on page 147 of book No. 2; also, a complete copy of pages 55 and 56, book No. 2, being part of the Heisley account already referred to.]

Examiner copies them as follows:

[Dates from the third page of the Heisly account in book No. 1:

"1874

Oct. 1, Oct. 5, Oct. 8, Oct. 22, Oct. 22, Oct. 26, Oct. 28, Oct. 30, (entry without a date,) Nov. 18, Nov. 21, Nov. 27, Nov. 27, Nov. 29."

Dates from the fourth page of Heisley's account book No. 1:

"Dec. 22, Dec. 25, (entry without a date,) Dec. 29, Dec. 29, Jan. 7, Jan. 18, Jan. 27."

Dates from page 147 of book No. 2:

"Aug. 30, Aug. 30, Sep. 1, (entry without date,) Sep. 4, Sep. 7, Sep. 17, Sep. 20, Sep. 26, Sep. 26, Oct. 5, Oct. 5, Oct. 8, Oct. 8, Oct. 16, Oct. 16, Oct. 16, Oct. 22, Oct. 28, Nov. 21, Nov. 21, Nov. 28, Dec. 4, Dec. 13, Dec. 20, Dec. 24, Dec. 24, Dec. 30."

Complete copy of pages 55 and 56 of book No. 2, being part of the Heisley account already referred to:

Page 55, book No. 2.

		55
		\$ cts.
1875 Philip Heisly		
In act. with W. C. Patterson,	Dr.	
Oct. 16, Carried from old Book,		40.27
Nov. 10, Set 4 shoes, . . . . .		.40
16, Putting plate on pole, . . . . .		.25
17, Fixing bridle bit, L in chain, . . . . .		.10
22, Set one shoe, . . . . .		.10
24, One new shoe, . . . . .		.10
26, 3 new shoe,		1.13
26, Sharpening one shoe, . . . . .		.12
27, Fixing lock, . . . . .		.25
Dec. 1, Dressing wedges, 2 mall-rings, . . . . .		.15
4, Fixing hame, . . . . .		.10
		<hr/>
		42.97
Dec. 7, Balance due Patterson, \$11.68.		
8, Dressing grubbing hoe, . . . . .		.10
14, One pair of tongs, . . . . .		.50
1876		
Jan. 5, One new shoe, . . . . .		.37
8, Making steeple, . . . . .		.10
11, Setting 2 new tyre,		3.00
11, One new shoe, . . . . .		.37
18, Steeling grubbing hoe, . . . . .		.35
23, Welding single-tree clip and hook, . . . . .		.15

DEPOSITION OF WILLIAM C. PATTERSON.

1787

24,	Fixing digging iron, . . . . .	.10
	Bout 20 pound of steal [<i>crossed out</i>]	
31,	One new shoe, . . . . .	.87
Feb. 5,	Toeing one shoe, . . . . .	.15
5,	Sharpening 7 shoes, . . . . .	.85
5,	Three new shoes,	1.00
16,	One new shoe, . . . . .	.25
19,	One link in chain, . . . . .	.15
26,	Fixing one buggy spring, . . . . .	.50
		<hr/>
		19.89"

Book No. 2, page 56.

" P. Heisley, 1876,		
Mc		
1	fixing lock draw,	10
Mc 9	making one pair of spread chains,	60
9	fixing 4 trace chains,	15
9	iring doubletree,	15
9	fixing clever,	05
9	Set one shoe	10
13	iring singletree,	15
	Received amount of order in full \$15.00	
14	Sharpning grubbing hoe,	10
17	Making doubletree hook,	20
22	Cramer Bill	1.55
22	fixing Boring Machine,	35
	Making bit,	10
27	One Steaple	5
28	fixing harness	15
28	fixing harness	15
31	set one shoe	20
31	fixing 2 shoes,	25
31	fixing harness	10
Ap. 3	one link in chain,	5
8	Set one shoe,	15
10	finding 2 shoes,	30
10	One bolt,	10
12	2 shoes, fixing plan,	50
12	Making Stape,	5
18	fixing plow rod,	10
20	one shoe,	15
20	fixing harness,	25
27	dressing diging iron,	10
May 2	Dressing 2 mason hammers,	40
4	one shoe,	20
	sharpening grubbing hoe,	10
		<hr/>
		\$6.82"]

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At request of defendants' counsel, the Examiner states that on the second page of the Heisley account in book No. 1, the first entry of credit appears to have been originally written as follows: "Peter Heisley day and a half helping in shop \$1.50," and that the figures were changed to \$1.00, the change being obvious; and that on the third line from the bottom, the entry: "Sept. 15, five cultivator teeth, \$1.00," has been struck from the account by ink marks; and also that on page 4 of said Heisley account in book No. 1, the footing of "\$8.22" is evidently written over other figures; and that on the 5th page of said account in book No. 1, the 9th line, in the entry of "May 11, making pick \$1.00," the page bears evidence of the original figures having been scratched out, and the two zeros written in place of something formerly there; and the entry in the succeeding line has been scratched out with a pen; and that on page 55 of book No. 2, the first three written lines including the entry "Oct. 16, carried from old book," are written in a totally different handwriting from the entries of charges for work done in the several pages of the Heisley account.

Complainants' counsel requests the Examiner to certify that those first three lines contain merely the heading of the account, and the entry, "Oct. 16, carried from old book \$40.27;" and that similar entries appear in the same handwriting in the opening of several other accounts on other pages in the same book and under the same date. Also, that the changes and corrections in book No. 1, referred to, do not present the appearance of any attempt at concealment, and that the entries as originally made are legible, except in the case of the figures scratched out and written over with the two zeros, where the fact of scratching is obvious, but the original figures are entirely obliterated; and, also, that it is the figures as they now stand uncanceled which enter into the footings of the account. The Examiner so certifies. He also states that the last entry on the 4th page is of 40 cents, and that he has included this in his footing; that on the same line as this entry and at the bottom of the page is written the word "Paid," and that this "40" is on the line below the footing of "\$8.22," but that the footing is not in the column with the charges, and the "40" is on the last ruled line of the page and in the column of the charges; and that in adding the footing, the entry of 30 cents, in the sixth line from the bottom, was counted in; that across the "30" is a mark of ink which the Examiner thinks was caused by a blot from a heavy stroke on the opposite page, and that across the lower part of the figure 3 is another ink mark as to which the Examiner is unwilling to take the responsibility of deciding whether it is a pen mark or a blot; and that the body of the entry is not obliterated in any way; that the credit of one dollar for

Peter Heisley's work on page 2 of the account in book No. 1, is neither added nor subtracted in making the footing, although it is in the column of the charges. But in no case are the credits, only a few of which are found in the book, taken account of in the footings.]

Q. Q. 285. Please state in whose handwriting are the first three lines of the Heisley account, on page 55 of book No. 2.

A. Mack Shaffer's. He was working with me at the time.

Q. Q. 286. I find on that same page an entry :

"Balance due Patterson \$11.68."

Did you have a settlement with the Heisleys at that time, and with that result. What is the fact about that ?

[*Objected to as leading and immaterial.*]

A. Yes, sir.

Q. Q. 287. In whose handwriting are those words and figures, "Balance due Patterson \$11.68."

A. My wife's, I believe. It could have been Mack's, too, but it looks like my wife's writing.

Q. Q. 288. You have testified that you had some conversation with Mr. Beers ; did he and you meet for the purpose, or were they casual conversations ? State the circumstances about them.

A. No, sir ; they wasn't on this at all. Politically, most all of them. I was on the committee there in the township, and we were always good friends. He was a candidate once, and was elected sheriff ; and of course he expects now to do his part for the party, and, I being on the committee, of course he naturally comes to me and we talk about it.

Q. Q. 289. In your 200th cross-question you were asked about a recent conversation with Mr. Fenn at your shop. Did Mr. Fenn then ask to see your books ; and what did you tell him about seeing them ?

A. Yes, sir ; he did. I told him they weren't there, and where they were. I told him if I had the books I would just as soon let him have them as any one else. It might not have been in them very words, but that is what I told him.

Q. Q. 290. You testified in your 202d and 203d cross-answers that you called upon two persons in your shop to bear witness to conversations which they heard between you and Mr. Fenn on that occasion. If there was anything in Mr. Fenn's remarks or conduct at that time which led you to prefer that some third person should take note of what it was, will you please state it ?

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A. By Mr. Miller coming running into the shop where me and Mr. Fenn was, and commencing to talk about it, too; of course their actions looked to me as if they wanted to trap me in some way or other. For that reason I didn't say anything more about it than I did.

[That portion of the above answer objected to which purports to give the inferences drawn by the witness.]

Q. Q. 291. State whether you understood at the time that the defendants' testimony was or was not closed?

A. I don't understand.

Q. Q. 292. State whether or not you understood at the time that Mr. Fenn's side had got through calling witnesses, and that the other side was going to begin.

[Objected to as leading, and also as immaterial and incompetent.]

A. Yes, sir; I did.

Re-cross by Mr. Dixon:

Re-cross-Q. 293. On your cross-examination you associated in your mind the work of "ironing corn-shovel plow," a charge for which appeared as matter of fact, in June, 1876, with an entry in your book in 1874, "the 29th, fixing plow, \$1.75," stating, in answer to cross-question 132: "You see that will lead a man's mind." You now state on your re-direct examination, in substance, that the work of making this reamer with its hewn handle, is represented by the entry of a charge for making a "bit" for ten cents. Are you as positive that this last association in your mind, of the charge for the reamer, is as correct as the association that was in your mind associating the work of ironing the corn-shovel plow with the entry for fixing a plow in 1874?

[Question objected to as conveying an incorrect idea of the witness' testimony and meaning, unless his 125th and 135th questions and answers are read in connection with it.] •

A. I have answered about the plow before, and the entry about the boring-machine and the bit are correct, and the dates are correct. It was done for that purpose, and only for that purpose. It is the only time that I done anything of that kind for the Heisleys.

Re-cross-Q. 294. You are just as sure about the reamer as you were about the plow; are you?

[Objected to as immaterial and incompetent.]

A. I answered about the plow.

Re-cross-Q. 295. How did you temper the steel of that coarsely-made reamer so that it would preserve its cutting edge?

A. The same way you would temper anything else.

Re-cross-Q. 296. Please describe the process you then employed.

[*Objected to as immaterial, and because the subject-matter was exhausted in the previous cross-examination.*]

A. You put it in water and draw a temper on. Steel like that you don't cool off; you just put the edge of it in the water and temper it a little. The nature of the steel is hard. The nature of the steel will carry an edge without tempering.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
14th day of April, 1884.

FRED. M. OTT.

Examiner.

W. C. PATTERSON.

CHRISTIAN I. HEISLEY, *being produced, sworn, and examined, saith:*

Examined by Mr. Storrow:

Q. 1. Are you the same Christian I. Heisley who testified for the defendants, and whose deposition is found with the respondents' sur-rebutting testimony, page 662?

A. I am.

Q. 2. You testified in that deposition that some bored wooden pipes had been put into your father's place before September, 1874, and had leaked, and that afterwards your brother Peter got the auger from Mr. Keller and more pipes were bored. You also testified that this second boring took place in the spring of 1875, but you did not refer to any fact or book-entry positively fixing the time; did you have anything at that time beyond your general recollection to fix the date by?

A. No, sir; I did not.

Q. 3. Look at the instrument now shown you, marked "Heisley Reaming-Bit," and state whom it belongs to?

A. It belonged to father.

Q. 4. For what purpose, or what job, did your father get it made, and where was it made?

A. He got it made on purpose for laying the pipe the second time, and for that only, because we never laid any after that. W. C. Patterson made it; he is the blacksmith at Hartman's Mills.

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Q. 5. Was or was not this reamer used for the job of boring and replacing pipes the second time which you testified about in your former deposition?

[*Objected to as leading, especially as to the time and occasion of the use.*]

A. It was used, the second time.

Q. 6. You have stated that it was procured for that second job, and was used for that second job; how positive are you about that?

A. Father wouldn't have got it made if he hadn't intended to use it for that; and I know that he did use it.

Q. 7. Do you remember what the cutting part of it was made out of?

A. It was made out of a piece of the saw-blade of an up and down saw.

Q. 8. Did you or did you not know of that piece of saw-blade being about your father's place?

A. Yes, sir, I did; and handled it more than once.

Q. 9. Mr. Patterson has produced his account-book and pointed out in it an entry under date of March 22d, 1876, which, he has testified, is an entry of the making of that bit; with that to refresh your recollection and aid you, is it your present memory and belief that this second job of boring pipes was done in the spring of 1875 or the spring of 1876?

[*Objected to as incompetent and leading, and obviously an attempt to bias the mind of the witness from his own independent recollection upon the subject. Complainants counsel replies that the intent is to give the witness' memory the aid of a contemporaneous written entry.*]

A. My belief is that it was in 1876; if this would have been hunted up I don't suppose I would have made that mistake in the first place.

Q. 10. Did or did not Mr. Patterson ever make any other reamer for your father, to your knowledge?

A. I think not.

Q. 11. When you gave your former deposition for the defendants, you produced and testified from your memorandum-book as to places where you worked; have you that book here, and if so, will you please produce it?

A. Yes, sir; here it is.

Q. 12. In your former deposition you testified that you were at home most of the time during the winters of 1875, 1876, and 1877, and the last entry in your book, which you pointed out, giving any work done away from home in 1875, was worked for "Thompson Hase," Novem-

ber 19, 1875, (see defendant's sur-rebuttal record, page 668;) will you please look at your time-book and state for whom you did the first work off of your father's farm in the year 1876, and when it was?

A. James Bell, May 2, 1876.

[The Examiner copies the account referred to as follows:

" 1876 Labored for James Bell

May the 2 to a half day	\$	75
3 to one day	\$	1.50
4 to one day	"	1.50
5 to one day	"	1.50
6 to one day	"	1.50
10 to one day	"	1.50
11 to one day	"	1.50
12 to half day	"	75
13 to one day	"	1.50
15 to one day	"	1.50
19 to one day	"	1.50
20 to one day	"	1.50
22 to a half day	"	75
23 to one day	"	1.50
24 to one day	"	1.50
26 to one day	"	1.50
27 to one day	"	1.50
1876 Labored for James Bell		
May the 29 to one day	\$	1.50
30 to one day	\$	1.50
31 to one day		1.50
June the 1 to one day	"	1.50
2 to one day	"	1.50
3 to one day	"	1.50
5 to 3-4 of a day	"	1.00

10.00

C. Heishley

28.61

33.61

21@

1.50

10.50

21

31.50"]

Q. 13. While doing that work for James Bell, did you live at home with your father or not?

A. I had been back and forward all the time; yes, sir; sometimes I had been at home for a couple of days.

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Q. 14. You testified in your former deposition that Mr. Kissinger came to your father's place about that auger, and that that visit of his was while you had the auger at the place; now that you have had time to think the matter over more carefully, will you state what your recollection is on those two subjects?

A. I remember of him coming and inquiring for the auger, but whether it was while the auger was there I don't remember; I remember of him passing on.

Adjourned until April 15, 1884, at 10, A. M.

APRIL 15, 1884, 10, A. M.

Examination resumed.

Present, same counsel.

Examination of Christian I. Heisley, by Mr. Storrow, continued:

Q. 15. How far from home was the work which you did for Mr. Bell in May, 1876, entries about which are copied after your 12th answer?

[*Objected to as immaterial and irrelevant.*]

A. About a mile and a half, if you take the near cut.

Cross-examined by Mr. Dixon:

Cross-Q. 16. Will you state the circumstances under which Mr. Patterson's statements and his books were first brought to your knowledge and how long ago?

A. They were first brought to my knowledge by Mr. Brooks. I can't tell the exact time, but a few weeks ago. I first saw the books at the Bolton House, in Mr. Storrow's room.

Cross-Q. 17. How came you to go down to Harrisburg to the Bolton House on that occasion?

A. Mr. Brooks and Mr. Comfort, I think, had been up at my father's place. They sent word to my place that they wanted to see me. I didn't get to see them; so they left word for me to come down. So I went down to see them the next day.

Cross-Q. 18. Who went with you to the Bolton House?

A. I went there myself.

Cross-Q. 19. Who were present there besides the parties you have named?

A. There was nobody in but Mr. Comfort when I first went to the room. Mr. Storrow and Brooks came in shortly afterwards.

Cross-Q. 20. Tell us, as nearly as you are able to recollect, what Mr. Comfort said to you.

A. Mr. Comfort said, "You are here, are you?" I said, "Yes, sir." Then he said, "You had been away yesterday, had you?" I told him I was. I don't remember what he said after that.

Cross-Q. 21. Tell us what Mr. Brooks said when he first brought to your attention Mr. Patterson's books and statements.

A. Well, he said that he finds entries in Patterson's books for making a reamer and fixing a boring-machine. And he asked whether we used them—the reamer. I told him we did use it on the second time of fixing the pipe. Father got it made for that purpose up there. And that is the only time I remember it was ever used.

Cross-Q. 22. What else was said to you during that interview?

A. There was nothing said, that I remember.

Cross-Q. 23. You had conversation with Mr. Comfort, and when Mr. Storrow and Mr. Brooks were present there was some talk between all three, wasn't there?

A. No, sir; Mr. Comfort didn't say anything in regard to this matter. I talked with Brooks and Storrow about this.

Cross-Q. 24. What did Mr. Storrow and Mr. Brooks say to you about this?

A. They asked me whether I thought Mr. Patterson's books were right. I said I believed that they were.

Cross-Q. 25. When did you next see Mr. Brooks?

A. I don't remember of seeing Mr. Brooks after that till I started to come down here, when I met him at the depot.

Cross-Q. 26. Who told you the date when to start to come down here?

A. J. W. Beers, when he subpoenaed me. He read the subpoena; that fixed the date.

Cross-Q. 27. How many times have you met Mr. Beers within the last month?

A. I have met him, perhaps, three times.

Cross-Q. 28. Where?

A. Twice at my home, and I generally met him in town. It is a common thing.

Cross-Q. 29. When you were upon the stand before, you stated your

recollections upon these matters, in accordance with your memory; did you not?

A. Yes, sir.

Cross-Q. 30. And until Mr. Patterson's statements and books were brought to your attention, as you have stated, your recollections were the same, were they not?

A. Yes, sir.

Cross-Q. 31. And as your present belief, as to the date, stated in your direct examination, is based upon the entries in Mr. Patterson's books, if you were now personally convinced that Mr. Patterson is in error, and that the work done by him in making that reamer was actually done prior to 1876, by testimony that would be perfectly satisfactory to you, then you would believe just as you recollected it before these books were brought to your attention; would you not?

[Objected to, inasmuch as the witness has not stated that his present recollection, belief, and testimony are based entirely upon Mr. Patterson's books.]

A. No, sir, I would not, because this brings back to my memory. When these entries were found, I remembered that we got that made for that purpose, and I believe that Patterson's books is right.

Cross-Q. 32. You do not quite understand my question. Admitting that your father got the reamer made for the purpose, suppose you were convinced by perfectly satisfactory testimony that Mr. Patterson's books were incorrect as to the date when this was done, and that the correct date when Mr. Patterson did the work was before 1876, and the testimony convinced you of this, then your present belief would be changed; would it not?

[Objected to on the ground that the question has been already perfectly answered, and on the ground that it assumes a hypothesis which has no possible foundation of fact.]

A. If they could—no, I don't think it would.

Cross-Q. 33. Not even if you were convinced that Mr. Patterson did the work before 1876?

A. I believe that his books are right as he has testified to them; and I never knew him to do anything unjust.

Cross-Q. 34. That is not the question. What I ask is, if you were completely convinced by testimony that should be satisfactory to you, that Mr. Patterson did the work before 1876, that conviction would change your present belief, would it not?

[Objected to as above, and also as merely asking for the abstract opinion of the witness upon an abstract question.]

A. It would if I was completely convinced.

Cross-Q. 35. I find in the little account-book you produce in the direct examination, entries for work done for Peter Kaffenberger, in October and November, 1876; was this mason work, and if so, what did you do for Mr. Kaffenberger?

[Objected to as immaterial and outside the line of the examination-in-chief.]

A. It was walling out a well.

Cross-Q. 36. You did this for him at the time of the entries in your book, did you?

[Same objection.]

A. Yes, sir; I generally put my time down every day, or right after the work was done.

[At request of counsel for defendants, the examiner certifies that the following is a copy of the page of the book that the witness referred to:

"1876 Peter Cafenberger	Dr.	
Oct. the 11 to one day,		\$1.25
Nov. the 8 to one day,		\$1.25
9 to one day,		\$1.25
10 to $\frac{1}{4}$ of a day,		\$1.00
		<hr/>
		5.00"]

[Same objection.]

Cross-Q. 37. Was this well on Mr. Kaffenberger's farm, in Rye township, where he was then living?

[Same objection.]

A. It was.

Cross-Q. 38. Where did he get his water before that well was dug?

[Objected to as above, and because it doesn't appear that the witness has any personal knowledge upon the subject.]

A. I don't know.

Cross-Q. 39. How deep was the well which you walled?

[Same objection as to cross-question 35.]

A. I don't know; that was immaterial to me; I worked by the day; I don't know how deep it was; I walled a good many wells.

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Re-direct by Mr. Storrow:

Q. Q. 40. Do you live now at your father's place, or keep house for yourself; and if the latter, how far from your father's place?

A. I keep house for myself, about a half mile from my father's place, by the near cut.

Q. Q. 41. In your former deposition, (defts' rebuttal, page 667), you testified that you first knew of the first set of pipes on your father's farm when you returned home in the fall of 1874; will you now state your recollection as to how much time, or how many seasons passed before the second job of boring pipes was done, and any circumstances which enable you to state how many seasons did pass?

[Objected to because improper re-direct examination, and also because calling for mere guess-work.]

A. I remember the first pipes being in in 1874, when I came home; and since we have found dates and seen that I made a mistake, that it was 1876, as I remember better now than before, that we tried to fix them in the spring of 1875; and I remember that they were left that summer, and the next spring were taken up and some new pieces put in; I think that I helped to do some of the work.

Q. Q. 42. If I understand the geography of the country around Marysville, the principal road, or old road up Fishing Creek valley, starts from Marysville and runs up the valley; and the places of the following persons are on it in the following order, starting from Marysville: Kissinger's place, then that formerly occupied by Leonard Swartz, then David Cowan's, then, some two or three miles further on, your father's, then Patterson's blacksmith shop, a quarter of a mile from your father's, and then Emanuel Keller's, some three miles beyond; what is the fact about that?

[The last objection repeated; and also objected to because leading.]

A. It is right.

Q. Q. 43. At the time you testified for the defendants, about how many days were you waiting in Harrisburg before you went on the witness-stand?

[Objected to because immaterial, irrelevant, and incompetent; because improper re-direct examination, the subject not having been inquired into either the direct or as the cross-examination.]

Complainants' counsel calls attention to the fact that the defendants, on

cross-examination, went into the question of communication between the witness and the parties before testifying ; that subject having been gone into, the complainants wish the court to be informed of everything of the kind that has taken place on both sides.]

A. Five days from the time I went there.

Q. Q. 44. Where did you spend most of your time during those five days?

[Last objection repeated.]

A. In Mr. Jacobs' office.

Q. Q. 45. Who first came to see you on behalf of the defendants?

[Same objection.]

A. Mr. Fenn spoke first to me with regard to the matter in Mr. Leiby's store, and asked me if I didn't remember those pipes being put in at my father's place in 1874 or 1875. I told him I did not remember when it was. He asked me if I remembered of Peter having a patent wash-machine. I told him I did, but could not tell what year he had that. That is all, I believe.

Q. Q. 46. Did you afterwards, and before you went on the stand, hear from Mr. Fenn, or in Mr. Jacobs' office, anything that led you to the impression that the second job of boring at your father's place was in the spring of 1875?

[Same objection, and also because leading ; and protest is made against this continued and gross violation of the rules of evidence.]

A. I talked with Mr. Fenn and different others. Mr. Cowan and others said that Mr. Kissinger bored pipes in the spring of 1875; and to the best of my recollection I had thought so myself at that present time. Then I heard some one saying that Mr. Kissinger had said that he bored in 1878. Then they said that he must be out of his mind, as he was sold out several times; he must be mistaken.

Q. Q. 47. Who was it that said this about Mr. Kissinger's mind?

[Same objection.]

A. I think Mr. Fenn said it; that he was a total wreck, I think, was his expression.

Q. Q. 48. Did Mr. Fenn tell you that Mr. Kissinger had the bill of pipe, and the railroad books, when it came, to help him fix his dates by?

[Same objection and protest.]

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A. I don't remember who said that, but I heard it mentioned.

Q. Q. 49. Have you seen Mr. Kissinger recently?

[*Same objection.*]

A. I saw him since I am here.

Q. Q. 50. Is there anything out of the way with his mind?

[*Same objection.*]

A. No, sir; I find him the same as ever.

Re cross by Mr. Jacobs, de bene esse :

Re-cross-Q. 51. When you were in Mr. Jacobs' office, as you have testified, there were also there a large number of witnesses waiting to be called; were there not?

A. Yes, sir.

Re-cross-Q. 52. After you had been there several days it was discovered that you had an account-book at home, and you were sent home to get it; is that not a fact?

A. It is true.

Re-cross-Q. 53. You were also excused a day or two, were you not, on account of the illness of your mother-in-law?

A. No, sir; I had not been excused. They gave me leave to go home every evening and ordered me back the next day; but one day I did not get back till dinner.

Re-cross-Q. 54. Did you not one day come down on the eight, A. M. train and return on the ten-ten, A. M., train, on account of the illness of your mother-in-law?

A. No, sir; not to my recollection I didn't.

Re-cross-Q. 55. Is not this what you heard Mr. Fenn say with regard to Mr. Kissinger, namely: that Mr. Kissinger complained that for some years he had had a growing pain in his head?

A. I don't remember that he did.

Re-cross-Q. 56. You stated in answer to re-direct question 41: "Since we have found dates, and seen that I made a mistake." Are these the dates read to you on your direct examination, namely: the entries in Mr. Patterson's book?

A. Yes, sir.

Re-cross-Q. 57. You still remember, don't you, that after you had returned home in the fall of 1874, that "they (the pipes) didn't carry the water the way he wanted them, and as I was at home, we went to see

what was the matter with them and found they leaked." You still remember the pipes being troublesome that fall, don't you?

A. I remember that they didn't carry the water.

Re-cross Q. 58. You testified further in the same connection that you then "found they leaked, and we fixed them, and then they didn't work, and we left them till the next spring." How did you try to fix them that fall?

A. I had thought it was in the fall, but since the dates was found, and I studied over it, I remember that it was in the spring of 1875, in place of the fall.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
15th day of April, 1884.

C. I. HEISLEY.

FRED. M. OTT,
Examiner.

Recess until 2, P. M.

PETER J. HEISLEY, *being produced, sworn, and examined, saith:*

Examined by Mr. Storrow:

Q. 1. Are you the same Peter J. Heisley who testified for the defendants, January 4, 1884, and whose testimony is printed in the defendants' sur-rebuttal testimony, page 626?

A. I am.

Q. 2. In that deposition you stated that pipes were bored twice on your father's place with the auger, which, at one time, was Keller's; once when the pipes were first put in, and once when the line of piping was repaired, and two or three new joints, or a pen-stock bored; and that you never had the auger there but twice; is that correct?

A. Yes, sir; only the auger was Dicey's when I got it. It is Keller's now.

Q. 3. You testified that it was Dicey's the first time that you got it, and was Keller's the second time that you got it; is that correct?

[*Objected to as leading.*]

A. Yes, sir.

Q. 4. In that deposition you undertook to fix the date of the first job by the patent-right deed to you and Adams, and by the job of boring pipes on Adams' place. Did you, when you gave that deposition, have

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anything to positively fix the date when you did the second job of boring on your father's place?

A. I did not.

Q. 5. Look at the "Heisley Reaming-Bit," now shown you, and state whom it belongs to, and where it has been, until recently taken for use in this case.

A. That belonged to my father; he had it made, and I suppose it was lying around up at home until it was brought here.

Q. 6. Where did he have it made, and what job did he have it made for?

[Objected to because it has not appeared that the witness has personal knowledge, or other than hearsay information, where or for what it was made.]

A. It was made by William C. Patterson, for a job of wooden pipe to convey the water from the spring to the spring-house on my father's farm.

Q. 7. There were two jobs of work done on that pipe; was this reaming-bit got for the first job or for the second job?

[Same objection.]

A. For the second job.

Q. 8. Was it used on the second job?

[Same objection.]

A. It was.

Q. 9. How positive are you that it was used on that second job?

A. I am positive because I used it myself on that pipe, and had it made expressly for that purpose.

Q. 10. What was the blade of it made out of?

[Same objection.]

A. Out of a saw-blade.

Q. 11. Whom did that saw-blade belong to at the time the bit was made?

A. To my father.

Q. 12. State whether or not that saw-blade was on your father's place before this bit was made.

A. It was.

Q. 13. Mr. Patterson has produced his account-book, and testified that the entries in your father's account in it, under date of March 22,

1876, and which I now show you, are the entries for making this bit and repairing Keller's boring machine for your father. With that to aid your recollection, what will you now say as to what year the second job of boring pipe was in?

[Objected to because an obvious attempt to bias the mind of the witness, and also because clearly incompetent unless the entire testimony of William Patterson is read to the witness, that he may comprehend the full effect of all the statements of William Patterson, both on his direct and cross-examination.]

A. According to Patterson's books it was the 22d day of March, 1876.

Q. 14. Do you remember whether, at the time of this second job of boring the pipe, there was anything out of order with the auger that had to be repaired; and if so, state your best recollection about that?

[Objected as leading.]

A. It seems to me there was; I think that the key had broken off that held the bit.

Q. 15. You testified in your former deposition that you worked at blacksmithing in 1877; what blacksmith did you work for in 1877?

A. For William C. Patterson.

Q. 16. Had you worked for William C. Patterson at blacksmithing before 1877?

[Objected to as immaterial, irrelevant, and incompetent.]

A. I have.

Q. 17. In what year?

[Same objection.]

A. I worked for him in 1876.

Q. 18. While you worked for him in 1876 and 1877, did you use to see or know of this account-book of his, which has been produced in this case, and called No. 2, and contains the entry about the boring-machine and the bit?

[Same objection.]

A. I did.

Q. 19. Will you state whether or not you knew this to be his regular account-book, in which he kept his regular accounts?

[Same objection, and also because leading.]

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A. It was, as far as I know.

Q. 20. Did you ever make in it any entries yourself about his business during those two years, and while you worked for him?

[*Same objection.*]

A. I did.

Q. 21. I should like to have you point out in it some entries in your own handwriting, and call your attention to some pages you have already indicated to me, namely, 9, 97, 106, and 123.

[*Same objection.*]

A. First on page 9; yes, sir; I made the following entry:

"1877 James Bell Dr
Oct 3, 2 linch-pins and trace-bolts 30"

On page 97, the following:

"1877 April 7, 2 new shoes [under head of D Powers] 60
" received two dollars 2.00

April 7 by settlement
Balance due W. C. Patterson 10.96"

There are two entries on page 106 which I rather think are in my handwriting, but I am not certain about them.

On pages 122 and 123 there is an account in June, July, and August, 1876, for labor done by me in the shop for Mr. Patterson, and credits for cash, which he paid me.

Q. 22. During the years when your father had work done at Patterson's, did he settle Patterson's account by paying him in actual money for everything he had done, or did he pay it in part by work and supplies?

[*Same objection.*]

A. He paid him in money and produce until the year 1876 or 1877, along there. I squared some of his account by labor that I had done in the shop for him.

Q. 23. Look at the book which I now show you, page 7 of which is headed by an account headed: "W. C. Patterson, Dr.," and state whose book it is?

A. This is my father's book. My father died last year.

Q. 24. Is there any of your handwriting on that page, and in whose hand is the bulk of the account?

A. It is all in my brother Joe's handwriting, excepting the lower line.

[Complainants' counsel ask the Examiner to note that it consists of a series of charges mostly for produce ; that the first date is June 17, 1874, and that the last entry of a charge is November 1, 1875 ; that they are added up, the footing written in the book, being \$31.29, and that the addition is correct.

Objected to by counsel for defendants because immaterial, irrelevant, and incompetent ; also, because the entries in the book have not been properly proved, the said Joseph Heisley, in whose handwriting they are said to be, being alive and within the jurisdiction of the Examiner ; and, also, because the only proper way to make the same evidence is by the introduction of the book itself in evidence.

The Examiner so certifies, and also at request of counsel for defendants, that on said page of the book produced by the complainants, the footing shows evidence of scratching, and evidence that formerly additional figures were just below the present footing and another footing made, including the additional sum, but now scratched out.

At request of counsel for complainants, Examiner notes that the first nine charges on this page which is footed on the book in ink \$3.19, which footing is correct ; that the figures belonging to the rest of the charges are in another column, and added together amount to \$28.10 ; that the two columns together amount to \$31.29 ; that it is apparent that where the \$31.29 is now written something had been previously written and scratched ; that under it had been written something which is almost wholly obliterated, but appears to have been formed of a "3" in the dollar column, a "1" in the tens column, and a third figure which the Examiner cannot certainly determine, although using a magnifying glass.

Counsel for the defendants, under the circumstances, objects to the consideration of the statements about this book, unless as required by the rules of evidence, the book itself be now offered in evidence by the complainants and left in the custody of the Examiner ; and he renews his former objections.

The Examiner marks said page with his name and the date for identification.

At request of complainants' counsel, the Examiner copies the three lines written below the footing, as follows :

"December 7th

*Balance due to Patterson,
Eleven dollars sixty-eight cents,"*

The above entry is under date of 1875.]

[Same objections repeated.]

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Q. 25. In whose handwriting are the three lines just copied ?

A. J. F. Heisley.

Cross-examination declined.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
15th day of April, 1884.

FRED. M. OTT,
Examiner.

P. J. HEISLEY.

Adjourned until April 16, 1884, at 10, A. M.

April 16, 1884, 10, A. M.

Examination resumed.

Present same counsel.

MARGARET HEISLEY, *being produced, sworn, and examined, saith:*

Examined by Mr. Storrow:

Q. 1. Are you the widow of Mr. Phillip Heisley, and the mother of Mr. Christian I. and Mr. Peter J. Heisley, who testified yesterday ?

A. Yes, sir.

Q. 2. It has appeared that on your farm there is a line of piping made of bored logs, leading from the spring to the spring-house. Is that the fact ?

A. Yes, sir.

Q. 3. It has appeared that there were two jobs of pipe boring done on your farm; one when those pipes were first put in, and a second job of boring for the purpose of repairing the pipe afterwards. Do you remember that there were two jobs ?

[Objected to because grossly leading and incompetent.]

A. Yes, sir.

Q. 4. Will you state what year the first job was done in, and state any circumstance that helps you to remember and fix that date ?

A. I could not fix the date, but I remember that it was put in in 1874 first. I couldn't fix no date.

Q. 5. State any circumstance that enables you to fix that year as the year when it was put in first.

A. I don't understand that altogether right.

Q. 6. You told me something about your little girl, which fixed in your mind what year this boring was done in. I wish you would state that.

[*Objected to as leading.*]

A. It was done in 1874. She was a little girl, and I used to go and see them and take the child along, when they were at work at these pipes. By that I know it was in 1874.

Q. 7. How old was she then?

A. She was a year old.

Q. 8. How old is she now?

A. She will be eleven next July.

Q. 9. Did you have much trouble about the pipes leaking, between the first job when the pipes were put in, and the second job when more pipes were bored. State what the fact is about that.

A. We had considerable trouble. They had to dig at a good many places, and uncover them and try to pitch them; but they couldn't fix them. They had a lot of trouble.

Q. 10. Look at the "Heisley Reaming Bit" now shown you, and tell me whether you know it, and whom it belongs to?

A. Mr. Heisley got it made, and it belonged to Mr. Heisley, my husband.

Q. 11. What job of work did he get it made for?

[*Objected to because it does not appear that the witness has personal knowledge, or other than hearsay information.*]

A. For the last time when we fixed the pipes.

Q. 12. You may state whether you saw it used in that second job of fixing the pipes?

[*Objected to as leading.*]

A. Yes, sir; I seen it used.

Q. 13. After that job was finished, where did Mr. Heisley put it, and where has it been kept since, until Mr. Brooks took it away recently?

A. He took it out to the out-house, on the loft, and hung it up on the rafter; and there it stayed until Mr. Brooks took it.

Q. 14. Where did Mr. Heisley get that reaming-bit made?

[*Same objection as to question 11.*]

A. Mr. W. Patterson made it.

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Q. 15. Did you understand at that time that it was Mr. W. Patterson who made it?

[*The last objection repeated, and objected to also because leading.*]

A. Yes, sir.

Q. 16. Did you know what the cutting part of it was made out of; and if so, what was it?

[*Same objection as to question 11.*]

A. I couldn't tell what it was made of.

Q. 17. Has this reaming-bit ever been shown to Mr. Brooks at your house; and if so, who got it to show to him, and how did it happen to be mentioned and brought and shown to him?

[*Objected to as immaterial and incompetent.*]

A. Mr. Brooks came to our house and inquired about fixing the date of this last job when we worked at the pipes, and I told him that I couldn't fix him no date; and my son stood up—Charley—and he said that he thought he could fix the date; that there is an old reamer that his father got made on purpose for them pipes; and he told him if he would go to Mr. Patterson in his books he would find a charge there—find it in Mr. Patterson's books; my son Charley got the reamer and showed it to Mr. Brooks.

[*The hearsay statement in the above answer objected to because clearly incompetent, and especially as the said son "Charley" is within the jurisdiction of the Examiner.*]

Q. 18. When your son Charley mentioned the reamer, and got it and showed it to Mr. Brooks, did you, yourself, remember that it had been used on that job at the pipes, or not?

[*Objected to as leading and incompetent.*]

A. Yes, sir; I am positive it wasn't used for anything except that job; and it wasn't used before nor after.

[*Cross-examination declined.*]

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
16th day of April, 1884.

FRED. M. OTT,
Examiner.

MARGARET HEISLEY.

CHARLES W. HEISLEY, *being produced, sworn, and examined, saith:*

Examined by Mr. Storrow:

My age is eighteen; I reside three miles above Marysville, Perry county, Penna.; I am working on the farm most of the time.

A. 1. Are you a brother of Peter Heisley, who testified yesterday; and do you live on the farm with your mother, and with Peter, and some others of your brothers?

A. Yes, sir.

Q. 2. Look at the "Heisley Reaming-Bit," and state whether you know it, and whom it belonged to.

A. It belonged to my father, and I know it perfectly well.

Q. 3. It has appeared that Mr. Brooks was at your farm about a month ago; while he was there, did you show him this reaming-bit; and if so, where did you get it from, and how came you to show it to him? State the circumstances of his visit.

[Objected to as leading, immaterial, and incompetent; and protest is made against this gross violation of the rules of evidence by inquiring, on the direct examination, into conversations between the witness and complainants' agent.]

A. Yes, sir; I showed him the reaming-bit. I got it on the out-house, up on the loft. It must have been there for some years. Mr. Brooks stopped at our place and inquired where we got the lumber, and whether we had any accounts that we could refer to, when we bored the pipe. I told him the only thing we could refer to was an old reamer that we had made to ream out the end of the pipe; that Patterson had made it, and that we generally got things charged; and that by referring to his books he could find when it was made.

Q. 4. Did Mr. Brooks then take the reamer and go away from the house; and who went with him; and where did you understand they were going to?

[Last objection repeated.]

A. Mr. Brooks took the reamer away. My brother Philip went with him. He took him up to Patterson's.

Q. 5. Do you remember your father's getting that reamer made?

[Objected to as leading.]

A. I remember it.

Q. 6. Do you remember what it was made out of?

A. No, sir.

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Q. 7. Do you remember whether it was used on those pipes?

A. I remember.

[*Deposition objected to as incompetent and cross-examination declined.*]

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
16th day of April, 1884.

FRED. M. OTT,
Examiner.

C. W. HEISLEY.

Recess until 2, P. M.

WILLIAM HEISLEY, being produced, sworn, and examined, saith:

Examined by Mr. Storrow:

Q. 1. State your age, residence, and occupation.

A. I am twenty years old; I reside three miles above Marysville Perry county, Pennsylvania, on the farm with my brother and my mother—with my mother and my brother, Peter J. Heisley; my occupation is farming.

Q. 2. It has appeared that there were bored log-pipes on the Heisley farm leading from the spring to the spring-house; is that the fact?

A. Yes, sir.

Q. 3. It has appeared that there were two jobs of pipe-boring about those pipes, once when they were first put in, and afterwards when a few new logs were bored and put in for repairs. Do you remember that fact?

[*Objected to as leading*]

A. Yes, sir; I remember that there were a few logs bored and put in afterward.

Q. 4. Do you know "Heisley Reaming-Bit" now shown you; and to whom did it belong?

A. Yes, sir; it belonged to my father.

Q. 5. What did you ever know of its being used for on your father's place, if you do know anything?

A. To enlarge the end of the pipe—the hole in the pipe.

Q. 6. What pipes?

A. The pipes leading from the spring to the spring-house.

Q. 7. Did you see it used on those pipes?

[*Objected to as leading.*]

A. Yes, sir.

Q. 8. Did you understand at the time who made it; and if so, who was it?

[*Objected to as incompetent and not calling for the personal knowledge of the witness.*]

A. Yes, sir; Patterson made it.

Cross-examination declined.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 16th day of April, 1884.

FRED. M. OTT,
Examiner.

WILLIAM HEISHLEY.

WILLIAM ROSS, *being produced, sworn, and examined, saith:*

Examined by Mr. Storrow:

My age is twenty-three; I reside in Lancaster city, Pa.; I am driving a coal wagon for J. Stewart & Son.

Q. 1. Did you formerly reside in Marysville?

A. Yes, sir.

Q. 2. Did you know George W. Kissinger when you lived in Marysville?

A. Yes, sir.

Q. 3. Were you ever hired to George W. Kissinger?

A. Yes, sir.

Q. 4. In what year?

A. 1876.

Q. 5. Where was your father living at the time?

A. In Henry Eichelberger's house.

Q. 6. Whereabouts was that?

A. Along the river bank in Marysville.

Q. 7. What season of the year did you begin at Kissinger's?

[*These and all other questions on this line of examination objected to as immaterial, irrelevant, and incompetent.*]

A. In the spring.

Q. 8. Did any other member of your family work for Mr. Kissinger the same year that you lived there; and if so, which one?

[*Same objection.*]

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A. My brother Edward.

Q. 9. Did he work there before you, or after, or with you?

[*Same objection.*]

A. Before me.

Q. 10. About how long did he work there?

A. About a week before me.

Q. 11. Did his quitting have anything to do with your going there to work; and if so, what?

[*Same objection.*]

A. No, sir.

Q. 12. How long did you stay at Mr. Kissinger's, and what season of the year did you leave there that year?

[*Same objection.*]

A. August.

Q. 13. Which of Mr. Kissinger's sons was at home that summer while you worked there?

[*Same objection.*]

A. John and Frank.

Q. 14. If John did any work off the farm that season while you were there, where else did he work?

[*Same objection, and also because leading.*]

Question withdrawn.

Q. 15. Did John work anywhere else, besides on the farm, that season?

A. On the track he worked, some time after I left.

[*On the answer being read to the witness, witness says, "I didn't say 'after I left.'"*]

Q. 16. Did John go away that summer any time to stay?

[*Same objection, and also because clearly leading.*]

A. A good while after I left, he did.

Q. 17. Do you know where he went?

[*Same objection as to question 7.*]

A. He went west, as far as I know.

Q. 18. Do you know where Cyrus was that summer while you worked there?

[*Same objection.*]

A. I do not.

Q. 19. Did you hear at the time where he had gone to?

[*Same objection, and also because calling solely for indefinite hearsay testimony, the witness having stated that he does not know where he went.*]

A. I heard that he was in the west.

Q. 20. Where did you sleep and take your meals while you worked for Mr. Kissinger that summer?

[*Same objection.*]

A. At Mr. Kissinger's.

Q. 21. Did anybody sleep in the room with you; and if so, who?

[*Same objection.*]

A. John Kissinger and I.

Q. 22. Where did the family get their water for household use from, that season while you lived there?

[*This and all other questions bearing upon the time when the Kissingers put in their ram objected to as improper and incompetent evidence in rebuttal or rejoinder, the subject having been gone into at great length of testimony both of the Kissingers and others in the evidence taken by the complainants in reply; and emphatic protest is here entered against the attempt to take advantage of the serious illness of counsel in charge, and heretofore conducting the testimony in the case in behalf of its defendants, by this gross violation of the fundamental rules regulating the taking of testimony.*]

Complainants' counsel objects to the insinuations in the preceding objection as absolutely without any foundation of fact; he had not heard of Mr. Hill's illness until the morning the taking of testimony began last week, before which this witness and all others whom he has called, or now expects to call, were on his list and arranged for; the defendants have the advantage of the presence of Mr. Jacobs, who has been engaged as counsel in the preparation of the case for nearly four years, and has examined many of the witnesses, and of Squire Fenn, of Marysville, who was shown by the testimony in sur-rebuttal to have been actively engaged for over a year in the preparation of that part of the case which relates to Mr. Kissinger's ram. Complainants' counsel now present, and his associates, are entirely satisfied that the evidence which they have offered and propose to offer about the ram is not only material and competent at this stage of the case, but that they would fail in their duty both to their clients and to the court if they allowed

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it to be suppressed ; and complainants' counsel further calls attention to the fact that a large portion of the 1200 pages of testimony, which defendants have taken during the last ten months under the name of sur-rebuttal, is purely cumulative.]

A. Down at the spring.

Q. 23. Did you yourself fetch water from the spring for the use of the family or not, while you lived there ?

[Same objection, and also because leading.]

A. Yes, sir.

Q. 24. State whether or not, while you lived at Mr. Kissinger's, that summer, there was any ram on the place to throw water from the spring up to the house ?

[Same objection.]

A. No, sir.

Q. 25. Were there on the place that summer while you were there any logs which had been bored for pipe ?

[Same objection.]

A. No, sir.

Q. 26. Were there any logs or sticks lying around there for any purpose to any considerable amount ?

[Same objection.]

A. Nothing but fence-posts.

Q. 27. Where were they lying ?

[Same objection.]

A. East of the barn, near the pale-fence.

Q. 28. Near the cherry trees, or not ?

[Same objection and also because leading.]

A. Yes, sir ; near the cherry trees.

Q. 29. Were they new posts or old posts ?

A. They were new posts.

Q. 30. For what kind of fence ?

[Same objection.]

A. For post and rail fence.

Q. 31. Were there chips around them as if they had been made there, or was the ground clean around them, as if they had been made somewhere else and brought there ?

[Same objection.]

A. They were made there, and there were chips around them.

Q. 32. Describe how the road led from the house to the barn.

[*Same objection.*]

A. The road went west to the barn.

Q. 33. Did it cross the run or not in going from the house to the barn?

[*Same objection.*]

A. Yes, sir; it did.

Q. 34. Were there or were there not any ditches dug that summer on the place; and if so, state where, and what they were for?

[*Same objection, and also because leading.*]

A. No, sir; not that summer.

Q. 35. Was there any work done that summer on the road between the house and the run; and if so, what was it?

[*The last objection repeated.*]

A. Nothing done on the road that summer that I lived there.

Q. 36. Were there any drains dug there that summer; and if so, where, and what were they?

[*Last objection repeated.*]

A. There was no drains dug there that summer.

Q. 37. After you left that summer, which you say was in August, did you go up there during peach season to get peaches or to visit Mr. Kissinger?

[*Last objection repeated.*]

A. Yes, sir; I did.

Q. 38. When you were up there that same year visiting Mr. Kissinger or getting peaches, after you had left working for him, did you notice any drains or ditches, or observe whether any had been dug on the place since you quit working; and if so, what were they for, and where were they?

[*Last objection repeated.*]

A. There was one dug on each side of the road to drain the water down from the house.

Q. 39. What road—where did it lead to from the house?

[*Same objection.*]

1816 TESTIMONY FOR COMPLAINANTS IN REJOINDER.

A. From the house to the barn.

Q. 40. Did you at that time, or while you lived there, see any digging, down by the run ?

[*Same objection.*]

A. No, sir ; I did not.

Q. 41. Did you at that time, or while you lived there, see or know of any preparations for putting in a hydraulic ram to throw the water from the spring up to the house ?

[*Same objection.*]

A. No, sir ; I did not.

Q. 42. State whether or not, while you lived there that summer, there was any wagon-shed or wood-shed near the house.

[*Same objection.*]

A. Yes, sir ; there was.

Q. 43. Was there a bake-oven out of doors, that year ?

[*Same objection, and also because leading.*]

A. There was an old bake-oven aside of the wood-shed.

Q. 44. Were they building the wagon-shed while you lived there, or had it been built before you went there ?

[*Same objection.*]

A. I don't know of any wagon-shed, only that one aside of the bake-oven.

Q. 45. Was that there when you first went there to live that year ?

[*Same objection, and also because clearly leading.*]

[*Question withdrawn.*]

Q. 46. Was there or was there not a dry-house for drying peaches while you lived there that season ?

[*Same objection.*]

A. No, sir ; there was not.

Q. 47. Did you ever see a drying-house for drying peaches on that place ?

[*Same objection.*]

A. Some time after I left, I did.

Q. 48. How big a thing was it ?

[*Same objection.*]

A. It was about five feet long, three feet wide, and about five feet high.

Adjourned until April 17, 1884, at 10, A. M.

APRIL 17, 1884, 10, A. M.

Examination resumed.

Present, Mr. Storrow and Mr. Howson for complainants, and Mr. Dixon and Mr. Jacobs for respondents.

Cross-examination of Mr. William Ross by Mr. Dixon, de bene esse:

Cross-Q. 49. From 1872 to the present time, have you been living at home most of the time, or working for others and living with them?

A. I was living at home most of the time since 1872.

Cross-Q. 50. Were you living at home most of the time during each of the years since 1872?

A. Until 1876 I was.

Cross-Q. 51. How has it been during each of the years since 1875; have you been living at home most of the time?

A. Until 1876.

[*Question repeated.*]

[*Objected to, the witness having already twice stated that he was living at home most of the time until 1876.*]

A. I have been living at home until 1876.

[*Question repeated.*]

A. I have been living the most outside since the end of 1875.

Cross-Q. 52. Please state the names of some of the parties with whom you have been living outside.

A. I can't answer that question.

Cross-Q. 53. Is your difficulty in answering the question because of your inability to remember such occurrences in your life during the last few years?

A. I had so many little jobs I couldn't recollect of them—of all the work I done.

Cross-Q. 54. I did not ask you about all the work you did, or about all the parties you worked for; but when I asked you to state the names of some of the parties, didn't you reply that you couldn't answer that question?

1818 TESTIMONY FOR COMPLAINANTS IN REJOINDER.

[*Objected to as merely trying to badger the witness, and because the record shows for itself what the facts are.*]

A. I can't answer that question.

Cross-Q. 55. Am I to understand, then, that while you remember distinctly the little and varied details that you observed while at work on the Kissinger place eight years ago, as, for example, that some fence-posts were lying near the pale-fence, and that there were chips around them, and that you saw no logs that had been bored for pipe, and that your father was then living in Henry Eichelberger's house, yet you are unable to remember the names of any of the parties for whom you have worked during recent years, although you "have been living the most outside since 1875"?

A. I remember of the posts laying along the pale-fence, and chips around them, but I did not see any logs.

[*Question repeated.*]

A. I know of everything going on about the Kissinger farm while I worked there, but I can't remember of parties that I worked for. I can remember of Jesse Wagner—of working for him, after I left the Kissinger farm—at the coal-shutes.

Cross-Q. 56. How long was it after you worked for Mr. Kissinger before you went to work for Mr. Wagner?

A. In the fall of 1877 I went to work for Jesse Wagner.

Cross-Q. 57. How long did you work for Mr. Wagner.

A. That is more than I can answer. My father has got the account of that—the date of that, I mean to say.

Cross-Q. 58. Then, with the exception of the story detailed by you on the direct examination, you don't remember the particulars and details of the occurrences with which you were concerned seven or eight years ago?

A. I do while I lived on the Kissinger farm.

Cross-Q. 59. But how is it with other occurrences and circumstances in your life, and the details of your working for other parties since that time?

A. I can't answer that question.

Cross-Q. 60. What work were you engaged in when at Kissinger's?

A. In the first place digging sassafras sprouts, and from that there picking stone, and from that planting corn, and so on.

Cross-Q. 61. What were the Kissinger boys doing?

A. Doing the same work as I was doing.

Cross-Q. 62. How many of them did it take to dig the sassafras roots?

A. Old Mr. Meals, William Meals, John Kissinger, Frank Kissinger, and myself.

Cross-Q. 63. When did you go to Mr. Kissinger's to work—what month?

A. In the spring of 1876; I can't exactly tell you what month; my father has got the account of the time I worked there.

Cross-Q. 64. What I want is your independent recollection about these matters, without regard to information given you by others; please give your best recollection as to the month.

A. That question I can't answer you; father has got the time I went there.

Cross-Q. 65. Was it early in the spring—in March, or late in the spring—in May, or mid-way—in April?

A. That question I can't answer you. It was some time in the spring I went there; I don't recollect what time.

Cross-Q. 66. Then you can't tell whether it was early or late in the spring?

A. That question I can't answer.

Cross-Q. 67. What Kissinger boys were at home when you first went there?

A. John Kissinger and Frank Kissinger.

Cross-Q. 68. Were any other of the Kissinger boys then living at home?

A. No, sir.

Cross-Q. 69. Do you know Mr. J. C. Zimmerman?

A. Yes, sir; I do.

Cross-Q. 70. Was he living at Mr. Kissinger's when you went there to work?

A. Yes, sir; he was.

Cross-Q. 71. What work did he do on the place?

A. He didn't do any work on the place. He worked on the railroad track the time I lived there.

Cross-Q. 72. You stated, in answer to cross-question 55, that you remembered of the posts lying along the pale-fence; in what position were they lying?

1820 TESTIMONY FOR COMPLAINANTS IN REJOINDER.

A. They were lying on a pile along the pale-fence, near the cherry-trees, east of the barn.

Cross-Q. 73. Were they lying all in one pile?

A. I can't answer that question.

Cross-Q. 74. Do you remember of seeing any more than just one pile?

A. That is all I have seen, as far as I recollect.

Cross-Q. 75. Did this pile lie with the ends of the posts or the sides of the posts against the pale-fence?

A. To my recollection they were lying with the ends against the fence.

Q. 76. In this pale-fence, were the pales or pickets sharpened at their upper ends, or were they flat across their tops?

A. They were sharpened at their upper ends.

Q. 77. Were the tops of these pickets cut off at both sides so as to bring the point in the middle, or cut off at one side so as to bring the point at the opposite edge?

A. Both sides were cut off so as to bring the point in the middle.

Q. 78. How many inches were there between the pickets in this pale-fence?

[*Objected to as asking for mere guess-work.*]

A. About three inches, as near as I can tell.

Q. 79. How much ground was inclosed by this picket fence?

[*Same objection, and as not cross-examination.*]

A. That is more than I can answer. I never measured it.

Q. 80. Please tell us about how much ground.

[*Same objections.*]

A. I cannot answer the question.

Q. 81. Did it enclose a quarter of an acre?

[*Same objections.*]

A. I can't answer the question. I never measured the distance.

Q. 82. I suppose you can't remember whether it contained less, or even a great deal more than a quarter of an acre, can you?

A. I can't answer the question.

Q. 83. You can't remember whether it was a small or a large piece of ground, can you?

A. I can't remember, sir.

Cross-Q. 84. Now, sir, can you not remember that as you passed from the house directly back to the barn, along the wagon-track you have mentioned, that you passed this piece of picket fence at your left, between the house and the barn?

A. It was not along the wagon-track; it was east of the barn.

Cross-Q. 85. Then it was not anywhere to the left of the wagon-track as you went from the house to the barn?

A. No, sir; there was nothing but a post-fence to the left of the wagon-track from the house to the barn.

Cross-Q. 86. Was the spring to the left of the wagon-track and the barn as you went from the house to the barn?

A. Yes, sir; it was—west of the barn, aside of the old spring-house.

Cross-Q. 87. And there was no picket-fence anywhere to the left of the track as you went from the house to the barn?

A. No, sir; not to my recollection.

Recess until 2, P. M.

Cross-Q. 88. How high was this pile of fence-posts you saw?

A. I don't know, sir; I never measured it.

Cross-Q. 89. I don't suppose you did measure it, but give us your best recollection as to about the height of the pile.

A. I can't answer that question, sir.

Cross-Q. 90. What is your recollection as to about how broad the pile was?

A. I never took that much notice, how broad it was.

Cross-Q. 91. You never took much notice about the pile, any way, did you?

A. Yes, sir; I seen a pile of posts there.

Cross-Q. 92. But beyond the statement that you saw a pile of posts there, you don't remember how it looked, how high it was, how broad it was, or any of the particulars of it, do you?

A. I was never close enough to see how wide or high it was. I saw it was—I saw it was a pile of posts, and that is all I know about it.

Cross-Q. 93. You say you "were never close enough to it to see how wide or high it was;" how far from it were you at the time you were nearest to it?

A. About thirty steps.

Cross-Q. 94. And yet, though you couldn't see how high it was, you could see the chips lying on the ground by the side of it, I suppose; could you not?

1822 TESTIMONY FOR COMPLAINANTS IN REJOINDER.

A. Yes, sir; there was quite a pile of chips around it.

Cross-Q. 95. About how large were these chips?

A. I can't answer you that question, sir.

Cross-Q. 96. You don't remember the size of any of them, do you?

A. No, sir.

Cross-Q. 97. I suppose these posts were about the usual length of fence-posts, were they?

[*Objected to as vague, indefinite, and trifling.*]

A. I don't know, sir; I never measured them; I couldn't tell you about it.

Cross-Q. 98. Then you don't recollect whether they were about the usual length of fence-posts or anything about their length, do you?

A. No, sir.

Cross-Q. 99. They might have been ten, or twelve, or fourteen feet long, then, could they?

A. I can't answer that question.

Cross-Q. 100. Were these posts hewed or peeled, or did they have the bark on?

A. They were hewed at the top and had the bark on at the butts.

Cross-Q. 101. What was their diameter?

A. I can't answer that question; I don't know.

Cross-Q. 102. Can't you remember whether they were about six inches in diameter, or whether they were a foot in diameter, or anything about their diameter?

A. No, sir; can't answer the question.

Cross-Q. 103. Was it level ground back from the house down towards the run, which the wagon track to the barn crossed?

A. No, sir; it was down hill to the run.

Cross-Q. 104. How steep a hill?

A. I couldn't answer you that unless I would measure it.

Cross-Q. 105. Well, about how many feet below the level of the house was the run at the foot of the hill, as near as you can recollect?

[*Objected to as already sufficiently answered, and as asking for guesses.*]

A. That question I can't answer you.

Cross-Q. 106. It was quite a steep hill, was it not?

A. Yes, sir; it was.

Cross-Q. 107. You could stand at the house and look down upon the

top of the barn across the river at the foot of the hill, could you not?

A. Yes, sir; you could.

Cross-Q. 108. The house stood on the ridge on top of the hill, and the ground in front of the house sloped down towards the main road in front of the house, did it not?

A. No, sir; the house did not stand on the top—within fifteen or twenty feet of the top, and the ground sloped from the top of the hill to the house.

Cross-Q. 109. How much higher was the top of the ridge or hill than at the place where the house was?

[*Objected to as inquiring for guess-work.*]

A. About two feet.

Cross-Q. 110. This house being built on the ridge of the hill, how high was the wall, on the rear side towards the barn, before it reached the level at the front of the house?

[*Same objection.*]

A. About ten or twelve feet, as near as I can get at it.

Cross-Q. 111. With such a steep hill, when there was a severe storm the water would naturally run down the side of the hill, would it not?

A. Be sure it would.

Cross-Q. 112. You stated in your direct examination in substance that while you were at work for Mr. Kissinger there was no work done on the road between the house and the run, and no drains dug there; with such a steep hill you didn't see any occasion for digging such drains while you were working there, did you?

[*Objected to as not cross-examination, immaterial, argumentative, and asking for mere matter of opinion.*]

A. There was no drains dug while I worked there for Mr. Kissinger. Somewheres about two years after I left he dug one at each side of the road that goes from the house to the run.

Cross-Q. 113. Are these the ditches—one on each side of the road—that you saw on occasions when you were there getting peaches?

A. No, sir; I saw them about two years after I had left the Kissinger farm.

Cross-Q. 114. How far was the spring west from the barn?

A. Somewhere about thirty-five or forty yards, as near as I can tell.

Cross-Q. 115. How far to the left of the line of the wagon-track running from the house down to the barn?

A. That question I cannot answer you.

Cross-Q. 116. When you brought water from the spring to the house, did you carry it directly up from the spring to the house, or did you carry it first over to the wagon-track, and then up the wagon-track to the house?

A. Carried it up through the field to the left of the house from the spring.

Cross-Q. 117. Then you remember all about the inclosures and fences in that region between the spring and the house, do you?

A. Yes, sir; I do.

Cross-Q. 118. This wagon track, if I understand aright, was not a regular road or thoroughfare traveled by the public, but merely a wagon track where the Kissingers went with their teams from the house to the barn, and running from the public valley road by the house and down to the barn.

A. It was no public road, but just for their own use, going from the valley road past the house and down to the barn.

Cross-Q. 119. Did you work for Mr. Kissinger every day from the time you first went there until the time you finally left?

A. Yes, sir; I did.

Cross-Q. 120. How did he pay you—in money, or partly in money and partly in other things?

A. I don't know, sir. My father and him had the bargain made. He knows all about it.

Cross-Q. 121. Did you yourself ever receive anything from Mr. Kissinger?

A. Nothing more than a straw hat. My father got all the rest.

Cross-Q. 122. What month did your father move into Henry Eichelberger's house?

A. That question I can't answer you.

Cross-Q. 123. Whose house did he move from when he moved there?

A. John Weitzel's house, back of the round-house.

Cross-Q. 124. How long did he live there?

A. That question I can't answer.

Cross-Q. 125. You were living at home all the time he was living in Mr. Weitzel's house, were you not?

A. No, sir; I was living at Mr. Charters' awhile.

Cross-Q. 126. How long were you living at Mr. Charters' ?

A. About three months.

Cross-Q. 127. During what season of the year ?

A. That question I can't answer you ; my father knows the time I was there.

Cross-Q. 128. Then you don't remember whether it was winter or summer, spring or fall ?

A. No, sir.

Cross-Q. 129. But you can remember the number of the year, I suppose ?

A. No, sir.

Cross-Q. 130. You can remember the number of the year when your father moved into the Eichelberger house, I suppose.

A. No, sir ; I do not.

Cross-Q. 131. You can remember the number of the year when your father moved out of the Eichelberger house, can't you ?

A. No, sir ; I do not

Cross-Q. 132. How is it, then, that you remember so distinctly exactly the number of the year—1876—when you say you worked for Mr. Kissinger ?

A. Because I know him and my father settled ; that is the way I know the year.

Cross-Q. 133. And you trust your father's memory about this matter, and the date of the year, a good deal better than you do your own memory, do you ?

A. I did then.

Cross-examination continued by Mr. Jacobs:

Cross-Q. 134. How long have you been living at Lancaster ?

A. Going on two years.

Cross-Q. 135. What time of the year did you move there ?

A. The ninth of last November a year ago.

Cross-Q. 136. Did you go straight to Lancaster from Marysville, or did you live somewhere else between the time you left Marysville and the time you moved to Lancaster ?

A. I went straight from Marysville to Lancaster, and have been there ever since.

Cross-Q. 137. Have you or not been back to Marysville at all since you came to Lancaster to live ?

A. No, sir ; I have not.

1826 TESTIMONY FOR COMPLAINANTS IN REJOINDER.

Cross-Q. 138. Was there any particular reason for your staying away from Marysville during that time?

A. No, sir; there was not.

Cross-Q. 139. Has there, during a part of that time, been any particular reason for your not returning to Marysville, or its vicinity?

A. No, sir.

Cross-Q. 140. Has there been no charge of a criminal nature made against you before a justice of the peace at Marysville, within the last year?

A. Yes, sir; I heard so.

Cross-Q. 141. What was the nature of it?

A. That question I can't answer.

Cross-Q. 142. Was it not a charge of fornication and bastardy, made before Esquire Sheaffer?

A. I heard it was, sir.

Cross-Q. 143. Is it not the fact that you have settled that case by the payment of money to the prosecutrix, or her father?

A. Yes, sir; it is.

Cross-Q. 144. Is that the only charge of a criminal nature ever made against you before a justice of the peace, either in Perry county or elsewhere?

A. The only one I know of.

Cross-Q. 145. Let me refresh your memory. Was not a charge of stealing pigeons made against you before Esquire McAllister in Dauphin county?

A. There was at one time; yes, sir.

Cross-Q. 146. How long ago was that?

A. I don't remember how long.

Cross-Q. 147. Was it a year, two, or four, or five years ago? Give me your best recollection upon the subject.

A. I cannot answer that question, sir.

Cross-Q. 148. To the best of your recollection, was it as many as five years ago?

A. I don't know, sir.

Cross-Q. 149. Is it not a fact, that, prior to your leaving Marysville you were commonly known as "Chicken Ross?"

A. No, sir; that is not correct.

Cross-Q. 150. Were you never called by that name?

A. No, sir; I was not.

Cross-Q. 151. Besides the criminal charges above referred to, were any other criminal charges ever made against you before any justice of the peace of Marysville or elsewhere?

A. Not that I know of.

Cross-Q. 152. Let me refresh your memory again. Were you not charged before Theophilus Fenn, senior, esquire, now deceased, upon oath of Henry Musser, with stealing chestnuts, and general disorderly conduct?

A. I was. I was innocent, in fact.

[Last part of the answer objected to as irresponsible and volunteered.]

Complainants' counsel call the attention of the court to the precise character of the questions put, and of the objection just made.]

Cross-Q. 153, (de bene esse.) You were, however, compelled to pay for the chestnuts, and to pay the costs of the proceeding, were you not?

A. Yes, sir; we was honest; that is the reason we paid it. Other ones slipped.

[All of the answer after "Yes, sir," objected to as irresponsible and volunteered.]

Cross-Q. 154. Is your true name Ross?

A. My true name is "Forkenross." They give us "Ross" for short.

Cross-Q. 155. For whom did you last work before you left Marysville?

A. Seidels.

Cross-Q. 156. Do you mean at the forge?

A. Yes, sir.

Cross-Q. 157. How came you to quit working for Seidels?

A. Because I got discharged.

Cross-Q. 158. Why were you discharged?

A. I can't answer that question, sir.

Cross-Q. 159. Is it because you can't remember the circumstances?

A. I don't answer such questions.

Cross-Q. 160. Is it not the fact that Mr. Seidel, commonly known as Al. Seidel, caught you in improper relations with a colored woman in his employ, and thereupon discharged both you and her?

A. That is not correct.

Cross-Q. 161. If those are not the facts, will you please state what they were?

1828 TESTIMONY FOR COMPLAINANTS IN REJOINDER.

A. Because there was a few forge-men and I got to fussing, and they got a grudge against me; and that is the way they worked me out; I don't deny that I didn't talk to his colored woman.

Cross-Q. 162. What do you mean by "that is the way they worked me out?"

A. Why, they went to Seidel and told him stuff, and put more to it.

Cross-Q. 163. And that was the reason he discharged you, was it?

A. Yes, sir.

Cross-Q. 164. And the colored girl was discharged at the same time, was she not?

A. Yes, sir.

Cross-Q. 165. Did you not immediately afterwards go to W. K. Fenn, Esquire, and substantially admit the truth of the charge, and ask him to intercede with Mr. Seidel to take you back, upon the ground that "other ones had done the same"—

[*Defendants' counsel ask to withdraw the question. Complainants' counsel object.*]—

"and that you always attended to your work well"?

A. I did.

Cross-Q. 166. Had not Mr. Al. Seidel had trouble with you before that?

A. Yes, sir.

Cross-Q. 167. Please state what the trouble was.

A. In his corn-field, for Hallow-Eve corn.

Cross-Q. 168. You were caught there, were you not?

A. Yes, sir; we were.

Cross-Q. 169. When was that?

A. Awhile before I went to the forge to work; I couldn't mention when.

Cross-Q. 170. How long did you work at the forge prior to your discharge?

A. Very near a year, as near as I can tell, off and on.

Cross-Q. 171. How long before you began to work there were you caught in Mr. Seidel's corn-field?

A. I can't answer that question, how long it was.

Cross-Q. 172. Who was along with you when you were caught?

A. My brother and I.

Cross-Q. 173. What is your brother's name?

A. Edward.

Cross-Q. 174. Were you never, also, caught in Mr. Seidel's corn-crib?

A. No, sir; that is not correct, whoever says it.

Cross-Q. 175. Were you never caught at or near his crib?

A. No, sir.

Cross-Q. 176. Were you never caught with corn which you had taken from his crib?

A. No, sir.

Cross-Q. 177. Were you never charged with taking corn from his crib?

A. Not to my recollection.

Cross-Q. 178. Is it not a fact that you and several others were charged with taking several bags of corn from Mr. Seidel's place, and upon being so charged you restored the corn to Mr. Seidel?

A. No, sir; that is not correct; it is out of the question.

Cross-Q. 179. Who caught you and your brother Edward in the corn-field?

A. Harry Seidel. I never deny the truth.

Cross-Q. 180. You have been accused of taking other things that did not belong to you, from other persons than the Seidels, living around Marysville, have you not?

A. I don't know of anything.

Cross-Q. 181. Let me again refresh your memory. Were you not accused of taking tobacco and segars and shoes from the store of Mr. Leiby, of Marysville?

A. No, sir, I was not; it is all made up stuff.

Cross-Q. 182. Did you never restore to Mr. Leiby any of the articles which I have mentioned, or any other goods which had been taken, or were said to be taken, from his store?

A. No, sir; I did not.

Cross-Q. 183. Did you not, at one time, work for Mr. Leiby to pay him the value of any shoes or other articles, which were said to have been taken from his store?

A. No, sir; I did not.

Cross-Q. 184. Are you married or single?

A. I am single, sir.

Cross-Q. 185. Have you ever been married?

A. No, sir.

1830 TESTIMONY FOR COMPLAINANTS IN REJOINDER.

Re-direct by Mr. Storrow, de bene esse:

Q. Q. 186. Has W. K. Fenn, Esq., been present in the room while you were testifying yesterday and to-day?

A. Yes, sir.

Q. Q. 187. When you began to work driving a coal-wagon in Lancaster, what was the last kind of work you did before that?

A. Working in a stone-quarry out in the country, about a mile from Lancaster, for John Rowe.

Q. Q. 188. What work did you do before that?

A. I worked at Dillerville, on the track—building the new railroad track that goes around back of Lancaster, and belonging to the Pennsylvania railroad.

Q. Q. 189. How long did you work there at Dillerville on the new track?

[*This question and the foregoing, and all subsequent questions upon the same line of inquiry, objected to as not proper re-direct examination.*]

A. About six months.

Q. Q. 190. What was the last work you did before you went to work on the new railroad track at Dillerville?

A. At Rockville, Dauphin county, I worked on the railroad track there last before I came to Lancaster.

Q. Q. 191. About how long did you work on the railroad at Rockville?

A. About four months, as near as I can tell; and about two months at the east end of the bridge with the stone-masons.

Q. Q. 192. Did you work at Dillerville in the same gang that you worked in at Rockville, or not?

[*Objected to as leading.*]

A. Yes, sir; I did work in the same gang.

Q. Q. 193. Why did you quit working on the railroad at Dillerville?

[*Objected to as irrelevant, immaterial, and not proper re-direct examination.*]

A. Because the gang was all laid off. The road was done.

Q. Q. 194. Have you worked in and around Lancaster ever since you quit at Dillerville for the railroad?

[*Same objection.*]

A. Yes, sir; I have.

Q. Q. 195. How long have you worked in and around Lancaster ?

[*Same objections.*]

A. Ever since the ninth of last October.

Q. Q. 196. When did you quit working for the railroad at Diller-ville?

[*Same objections.*]

A. The twenty-eighth of February—this February a year ago.

Q. Q. 197. Where did you work between February a year ago and the ninth of last October ?

[*Same objections.*]

A. In the stone-quarry for John Rowe, and for Daniel Trivetts, in Lancaster; and from Trivetts' I went to the coal-yard of James Stewart & Son, where I am now.

Q. Q. 198. Did you work steadily from the time you quit the railroad till the time you went to the coal-yard, or not ?

[*Same objections.*]

A. Yes, sir; every day, unless sickness took place.

Q. Q. 199. Before you went to work with the stone-masons at the east end of the bridge at Rockville, what was the last regular work you did ?

[*Same objections.*]

A. On the railroad track.

Q. Q. 200. In what gang ?

[*Same objections.*]

A. In Harry Fickes' gang.

Q. Q. 201. How long did you work in Harry Fickes' gang on the railroad—on the track ?

[*Same objections.*]

A. About four months.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
17th day of April, 1884.

FRED. M. OTT,
Examiner.

WILLIAM ROSS.

Adjourned until April 18th, 1884, at 10, A. M.

1832 TESTIMONY FOR COMPLAINANTS IN REJOINDER.

APRIL 18, 1884, 10, A. M.

Examination resumed.

Present, same counsel.

JOSEPH F. HEISHLEY, *being produced, sworn, and examined, saith :*

Examined by Mr. Storrow :

My age is twenty-eight; I reside at Marysville, Perry county, Pennsylvania; I am a miller.

Q. 1. Are you the same Joseph F. Heisley whose deposition for the defendants is printed on page 679 of their sur-rebuttal record?

A. Yes, sir.

Q. 2. In that deposition you testified (page 679) that you left home and went to Neyhart & Son to learn milling, and that this was in October, 1877. Is that the certain date; and if not, what is the correct date when you went to Neyhart's?

A. It is not the correct date. I discovered afterwards that it was just one year later.

Q. 3. If you have any book-entry which fixes its dates when you went to Neyhart's, please exhibit it, and read the date when you went to Neyhart's.

A. I have here my book, and I find that I worked at home hauling bark, and I have the dates. I did not know that I had this book in my possession when I testified before. The book is a small cloth covered pocket pass-book, about two and a half by five inches in size.

Q. 4. Will you please point out the entries and have the Examiner mark the page or pages on which they are?

A. Yes, sir; here they are.

[Examiner marks two pages with his name and the date.]

Q. 5. What are the dates on those pages, and what is the work that is put down there?

A. May, 1878, hauling bark for a man by the name of Weaver in our place, and June 6 and 7, 1878, hauling bark for Galt and Kohr.

Q. 6. How does that enable you to fix that you didn't go to Neyhart's until the fall of 1878?

A. I done no hauling of bark after being at Neyhart's, and know that I went there after doing this work.

Q. 7. Do you know where Neyhart's books for 1878 are?

A. They were destroyed by fire.

Q. 8. In another part of the same book I see a number of charges

for mowing and hauling for various parties, dated July and August, 1878 ; did you do that work while at Neyhart's, or before you went there ?

A. I done that before I went there.

Q. 9. When you testified before, you were unable to fix definitely the date when the second job of boring pipe was done on your father's farm ; are you now able to state when the second job of boring pipe was done ; and if so, when ?

A. I find that I can correct the date by the making of a reamer, and know that it was done about that time.

Q. 10. Please look at the "Heisley's Reaming Bit" and state whether you know it, and to whom it belonged.

A. This is the bit that belonged to my father.

Q. 11. Where did your father have it made ?

[*Objected to because it has not appeared that the witness has personal knowledge or other than hearsay information on the subject*]

A. At W. C. Patterson's.

Q. 12. Did you understand, at the time, that it was made at Patterson's or not ?

[*Same objection, only calling solely for what witness was informed ; and also because leading.*]

A. I did at the time.

Q. 13. What did you understand, at the time, that it was made out of ?

[*Same objection.*]

A. Out of a saw-blade.

Q. 14. Whose saw-blade ?

[*Same objection.*]

A. My father's.

Q. 15. What job did your father get it made for ?

[*Same objection.*]

A. For the second boring of pipe.

Q. 16. Was it used on that job or not ?

A. It was used on that job.

Q. 17. How do you know it was used on that job ?

A. I saw it in use.

Q. 18. Mr. Patterson has testified that the making of that reaming-bit was done and charged in his account-book March 22, 1876. Is it

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your recollection and belief that the second job of boring the pipes was done about that time, or at a different season ?

[The above question objected to because obviously intended to bias the mind of the witness and influence his answer ; and also as incompetent in any sense, unless all the statements made by Mr. Potterson, both on the direct and cross-examination, are read to the witness.]

A. My recollection is that it was done about that time.

Q. 19. Please look at the book now shown you, and referred to in question and answer 23 of your brother Peter's deposition, page 1804, *supra*, and state whose book it is.

A. This was my father's book.

Q. 20. In whose handwriting is the account on page 7, headed "W. C. Patterson ?"

A. My handwriting.

Q. 21. Below the account are the words written "Paid in full up to date." In whose handwriting are those written ?

A. My brother Peter's.

Q. 22. Will you read to the Examiner, that he may take down as part of your answer, the entry in the three lines immediately above that, and state in whose handwriting it is ?

[Objected to except as to the handwriting, the book itself being the only proper evidence as to the contents.]

A. "December the 7th, balance due to Patterson eleven dollars and sixty-eight cents." It is in my handwriting.

Q. 23. What is the last year written in the column of dates above that—what year was that December in ?

[Same objection.]

A. December, 1875.

Q. 24. Did you make that entry of settlement in that book on or about the day when it is dated, or not ?

[Objected to as clearly leading.]

A. I made that entry at the same date—December the seventh.

Q. 25. Immediately above that entry is the footing of the column of charges; please read the figures of that footing, as they now stand.

[Objected to as incompetent, the book itself being the best evidence as to its contents, especially in view of the evident traces of scratching and writing over in the figures of the footing asked about, shown in the book.]

Complainants' counsel objects to defendants' counsel testifying about the contents of the book, and further objects that the statement of defendants' counsel about the entry is so imperfect and incomplete as to be substantially incorrect and misleading.

Defendants' counsel notices that complainants' counsel does not deny that the book shows traces of scratching at the place indicated; and even the statement made by complainants' counsel gives additional force to the objection that the book itself is the best and only competent evidence to its contents.]

A. \$31.29.

Q. 26. Who wrote those figures?

A. I did.

Q. 27. Did you write them at the time of the settlement there set down, or since that time?

[Objected to as leading.]

A. I either done them at that time or before.

Q. 28. In Mr. Patterson's deposition, after his answer 273, the defendants' counsel caused to be copied upon the record an entry, "Peter Heisley, a day and a half helping in shop," the charge for which was originally written, \$1 50, and then changed to \$1 00, the entry being under the date "1874," and immediately followed by another entry of a charge, dated "August 1st;" will you look in the account, on page 7 of your father's book, and state whether you find in it any charge for work done for Patterson; and if so, read it?

[Same objection.]

A. "1874, August to one days labor \$1.00."

Q. 29. Please read the date of the first entry of charge in that Patterson account on that page, and the date of the last entry of charge.

[Same objection.]

A. 1874, June the 17th, is the first; the last is November the 1st, 1875.

Q. 30. Were the accounts between Patterson and your father settled from time to time; and if so, did you have anything to do with the settlements, and where were they generally made?

[Objected to as leading.]

A. They were settled from time to time; I did have something to

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do with the settlements; I remember of times that he came down with his book to my father's place.

Q. 31. Who did the settling with Patterson?

A. I did, at this time of this settlement on page 7.

Q. 32. Please look at the next page of your book and see if you find entered there the record of any settlement with Mr. Patterson; and if so, please read it, and state in whose handwriting it is.

[*Same objection as to question 22, and also as immaterial.*]

A. It is in my handwriting. "Settled the above in full up to date, Dec. 21st, 1877. December 21st due to W. C. Patterson eleven dollars and ninety five cents."

Q. 33. If there was a date of a year in the date column immediately above the last "December" that you read, please read it.

[*Same objection.*]

A. "1877."

Q. 34. Did you or did you not write those entries in that book at or about the time of their dates?

[*Objected to as leading.*]

A. I did, at their date.

Q. 35. Did you or did you not yourself help to make that settlement with Mr. Patterson?

A. I cannot positively say that I made the settlement myself, but I was about at the time.

Q. 36. Please look at the book now shown you and state whose it is.

A. It is a book of my father's.

Q. 37. Please look at page 66, headed "William C. Patterson Dr. to P. H.," and if you find therein, written in ink, any settlement with Mr. Patterson; please read it, and state whose hand-writing it is in.

[*Objected to except as to the handwriting, because the book itself is the best and only competent evidence as to its contents.*]

A. I find: "1877, February 19, settled with W. C. Patterson. Due to Patterson 34.50." It is in my handwriting.

Q. 38. Will you state whether or not you made or assisted to make that settlement with Mr. Patterson?

[*Objected to as leading.*]

A. I did.

Q. 39. When you made these settlements with Mr. Patterson, did he

bring with him for you to look over just a copy of his account, or did he bring his account-book itself?

A. He generally brought his book itself; I never knew him to bring a copy.

Q. 40. Please look at the two Patterson account-books, Nos. 1 and 2, referred to in Mr. Patterson's deposition, and state whether you recognize the books, and whose you know them to be?

[Objected to as leading, and also because the proper party to identify said books is Mr. Patterson himself.]

A. I recognize the books to be Patterson's.

Q. 41 Please look at the second book, at page 145, being a page of your father's account, and previously marked by the Examiner, "F. M. Ott, April 10, 1884," and read the entry relating to a settlement which is there, giving the date written for it on the page.

[Objected to because the books themselves are the best and only competent evidence as to their contents, and also because these subsequent proceedings in 1877 and following years are wholly immaterial and irrelevant.]

A. "February 19th settled account in full up to date, balance \$34.50." This is under the date "1877."

Q. 42. Will you now please look at your father's account in this same Patterson's book on pages 55, 56, 57, 58, 59, 145, each one of which has been previously marked by the Examiner "F. M. Ott, April 10, 1884," and see if you find any entry of a settlement, or which purports to relate to a settlement, between December 8, 1875, and the entry of February 19, 1877, which you have just read?

[Objected to because the books themselves are the best and only competent evidence of the contents thereof.]

A. I do not.

[Complainants' counsel now leave in the custody of the Examiner all the books referred to in the examination of this witness, those previously referred to having been in his custody since first exhibited, and states that they will be left with him for the present and will be produced at the hearing or filed in evidence, if he may be able to arrange with the owners.]

The books referred to are Patterson books Nos. 1 and 2, referred to in Mr. Patterson's deposition; Philip Heisley book No 1, referred to in deposition of Peter J. Heisley and Joseph Heisley, the present witness; Philip Heisley book No. 2, referred to in the 36th and 37th answers of the witness;

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Joseph F. Heisley time-book, referred to in the answer of this witness, the pages of which have been referred to have been marked by the Examiner with his name and the date for identification.]

Cross-examination declined.

Examination taken, reduced to }
writing, and by the witness sworn }
and subscribed to before me, this }
18th day of April, 1884. }

J. F. HEISLEY.

FRED. M. OTT,
Examiner.

Recess until 2, P. M.

Present, Mr. Smith and Mr. Storrow for complainants, and Mr. Dixon and Mr. Jacobs for respondents.

G. E. ZEHNER, *being produced, sworn, and examined, saith:*

Examined by Mr. Storrow:

My age is forty-two; I reside at Carlisle, Cumberland county, Pennsylvania. I am a minister of the Evangelical Church.

Q. 1. Were you ever settled at Marysville, Perry county, Pennsylvania?

A. I was.

Q. 2. From what time to what time?

A. From the spring of 1877 to the spring of 1879.

Q. 3. In what part of the town was your residence, and in what part was the church of which you were pastor?

A. Both were in the western part, on the valley road, up on the hill.

Q. 4. Did you know Mr. George W. Kissinger while you lived there?

A. I did.

Q. 5. Was he a member of your church, or was he in the habit of attending your services there?

[*Objected to as immaterial, irrelevant, and incompetent.*]

A. He was no member. He attended my services.

Q. 6. While he attended your services, was he a member of any other church there, if you know?

[*Same objection, and also because obviously an attempt to bolster up the character of one of complainants' witnesses; and also because it has not*

appeared that the witness has personal knowledge upon the subject, or other than hearsay information.

Complainants' counsel says that the first part of the objection exhibits an extraordinary misunderstanding of the purpose of this testimony, and that he finds no occasion to introduce anything to support Mr. Kissinger's character.]

A. He informed me that he was going to unite with the Lutheran church, and he did unite afterwards; at least, I saw him worshipping there; he didn't speak to me afterwards to inform me of it.

[The above answer objected to because consisting of hearsay statements and inferences drawn by the witness.]

Q. 7. Who was the clergyman who preached to the Lutheran congregation at the time you refer to?

[Objected to as wholly immaterial, irrelevant, and incompetent.]

A. Rev. Mr. Kerr, from, I think, the latter part of 1877 to October, 1878; then Rev. Mr. Tressler.

Q. 8. Was there a Lutheran church there before Mr. Kerr began to preach, or not?

[Same objection.]

A. Not to my knowledge.

Q. 9. Did or did not Mr. Kissinger attend services both at your church and at the Lutheran church during the same season?

[Same objection.]

A. He attended both.

Q. 10. How did that happen?

[Same objection.]

A. The services were not at the same hours.

Q. 11. During which year of your residence was it that he attended the services both of yourself and of Mr. Kerr?

[Same objection.]

A. The latter part of 1877 and 1878, up to the time Mr. Kerr left—the entire time that Mr. Kerr was there.

Q. 12. Did you ever visit Mr. Kissinger's house; and if you remember any special visit when you took a meal there, will you please state when it was?

[Same objection.]

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A. I did ; I took a meal there in the latter part of August or September, 1878.

Q. 13. If you think of any circumstance which enables you to fix the time of that visit as being in the latter part of August or September, 1878, please state it.

[Same objection ; and this and all other questions bearing upon the time when the Kissingers put in their ram objected to as improper and incompetent in rejoinder, testimony at length having been taken upon this subject by complainants in reply ; and the protest heretofore made against such a violation of the fundamental rules covering the taking of testimony is here repeated.]

A. It was peach harvest, immediately after my return from camp-meeting, which was in August.

Q. 14. How long a visit was that, and who was with you ?

[Same objection.]

A. My wife was with me. We were there a good part of a half day.

Q. 15. It has appeared that on Mr. Kissinger's place there was a spring, something like a hundred and fifty or two hundred yards from the house, from which the family obtained water. Do you remember that spring ?

[Same objection.]

A. I do.

Q. 16. If, at the visit which you have mentioned, in the last of August or September, 1878, you heard anything as to how the family got their water from the spring, or had got it, or expected to get it, and if you know whether there was a hydraulic ram on the place at that time, will you please state it ?

[Same objection, and also because calling for hearsay testimony.]

A. I heard complaints of the difficulty in getting the water. After the meal Mr. Kissinger took me to the rear of the house and pointed out the location of the spring. I am morally positive there was no hydraulic ram in successful operation at that time—and expectations expressed by him of being relieved of the difficulty under which they were laboring of getting their water.

Q. 17. Was there or was there not any ram on the place at the time ?

[Same objection, and also because leading, the witness having just stated that

he is morally positive that there was no hydraulic ram in successful operation at that time.]

A. What do you mean by that? There might have been a dozen, for that matter. I am morally positive there was none where there is one now.

Q. 18. It has appeared that at one time there was a ram to pump water from the spring to the house, and that the pipes connected with it terminated with a pipe coming up from the ground about twenty feet from the house. Was there, or was there not, such a pipe at the time of the visit you have mentioned?

[Same objection.]

A. I saw none. I think I would have seen it had it been there.

Q. 19. Had you ever heard of hydraulic rams before that visit, or had you any such interest in them as would have led you to look at one if there had been one set in position two or three hundred feet from the house at the time of that visit? State the facts on that subject.

[Same objection. and also because leading and argumentative.]

A. Yes, to both parts of the question.

Q. 20. Had you ever seen a hydraulic ram at that time?

[Same objection.]

A. No, sir.

Q. 21. Had you ever taught anything that required you to speak of them and explain the nature of their operation?

[Same objection, and also because clearly leading.]

A. I had, in teaching philosophy, as far as it entered into my general teaching.

Cross-examination, de bene esse, by Mr. Dixon:

Cross-Q. 22. Is it the custom in your church, generally, to have camp-meetings in the summer?

A. Yes, sir.

Cross-Q. 23. Did you have one in the summer of 1877?

A. Yes, sir.

Cross-Q. 24. Did a peach harvest follow the time of that meeting that year?

A. In 1877 I attended camp-meeting near Mifflinburg the first week in August, and also one on McClure circuit the second week in August.

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Cross-Q. 25. The peach harvest was after the time of that meeting that year, was it not?

A. We canned our peaches that year after camp-meeting, as we have been in the habit of doing.

Cross-Q. 26. And of course that convinces you that that year the peach harvest was after the time of that meeting; that is, there were peaches gathered after that meeting, were there not?

A. There were peaches gathered after that meeting.

Cross-Q. 27. Do you keep a record of the visits made by you?

A. I do not of all visits.

Cross-Q. 28. Have you any record of your visit to Kissinger's?

A. I have not; but my wife visited at her home until the camp-meeting I attended that year—then returned with me from camp-meeting, and some time after that we visited Mr. Kissinger.

Cross-Q. 29. Then your wife was at home in Marysville about the time of this visit?

A. Yes, sir.

Cross-Q. 30. Was she also at home during the peach harvest after the camp-meeting in 1877?

A. Yes, sir.

Cross-Q. 31. Describe, for example, the horses you saw on the Kissinger place at that visit.

A. I don't recollect anything about the horses.

Cross-Q. 32. There might have been horses there and you not have seen, might there not?

A. Yes, sir.

Cross-Q. 33. How many sheds and out-houses of various kinds were there about the house at the time of your visit?

A. I recollect none, excepting one west of the north-west corner of the house. I do not know what kind it was.

Cross-Q. 34. Are you "morally positive" that this was the only one on the premises near the house?

A. I am not.

Cross-Q. 35. Do you distinctly remember whether you went all around the house at the time of that visit?

A. I do not.

Cross-Q. 36. Then there might have been a number of things, on one side or another of the house, that you didn't happen to see, could there not?

A. Yes, sir.

Cross-Q. 37. There has been testimony given to the effect that at one time there was on the premises a dry-house for drying peaches. Did you see that?

A. As stated, I have no recollection of any out-building with any special name attached to it.

Cross-Q. 38. Well, what was the size of the one you saw?

A. I do not recollect.

Cross-Q. 39. Is this because it was five or six years ago that this visit occurred, or is it because you didn't notice particularly the surroundings at the time you made that visit?

A. It is because I was not interested in out-buildings.

Cross-Q. 40. And at the time of that visit you were not interested in things you didn't see, and which are supposed to have no existence, were you?

A. Excepting, perhaps, as suggested by the complaint of the family for some means of relieving them of the labor of carrying the water such a distance.

Cross-Q. 41. Why do you put in the word "perhaps"?

A. Because I did not know whether I fully understood the question, as touching things not in existence.

Cross-Q. 42. You were careful to state in your direct examination that you saw there no ram in "successful operation"; and, again, that there might have been a dozen there; if some old ram, out of order and out of use, was completely covered up, as far as your personal knowledge goes, you would neither have seen it nor seen it in operation, would you?

A. I answered the question because it was so broad as to the dozen; but judging the effects from the cause, I am morally positive there was no ram in successful operation, or there would have been water.

Cross-Q. 43. And that is as far as you can conscientiously go, is it not?

A. I do not think there could have been a ram in position even, so near, without my going to see it.

Cross-Q. 44. I do not ask for the inferences you may draw, or the logical deductions you may make, but I repeat the last interrogatory, and request a direct answer.

[Objected to, first, because the witness has perfectly answered the question; and second, because the cross-examination, particularly cross-question 43, has asked for deductions and inferences.]

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A. It is, with the exception of my last answer.

Cross-Q. 45. You can recollect something about the dimensions of this out-house you saw on that occasion, can you not?

A. My impressions are that it was not very large. I, perhaps, would not recollect it at all had I not passed it in going from the rear of the house to the peach-orchard.

Cross-Q. 46. Give us some idea of the dimensions of it.

A. It would only be guess-work, at best; hence, I prefer not attempting it.

Cross-Q. 47. Was it a wagon-shed?

A. I recollect no out-building with any special name attached to it.

Cross-Q. 48. Are you able to recollect whether it was large enough for a wagon-shed?

A. I have stated I have no recollections definitely of the size.

Cross-Q. 49. Can you state whether or not there was a bake-oven out of doors?

A. I have no recollection of any out-building with any special name attached to it.

Cross-Q. 50. I am not inquiring now about buildings. I asked you if there was an oven—a bake-oven out of doors.

A. I have no recollection of any bake-oven.

Cross-Q. 51. There might have been one there and you not have seen it, could there not?

A. Yes, sir, and I not have noticed it.

Cross-Q. 52. What did you go from the house to the peach orchard for?

A. For peaches.

Cross-Q. 53. For yourself? and did you take any home?

A. Yes, sir.

Cross-Q. 54. You were "interested" in peaches personally, and yet you are not "morally positive" whether you did or whether you did not observe on the premises, outside of the house, any facilities for curing or preserving them; are you?

A. I have no recollection of any. I was interested in peaches only so far as accepting Mr. Kissinger's invitation to visit him and get some peaches.

Cross-Q. 55. Did you see any pile of fence-posts on the premises while you were there?

A. I might have; I have no recollection of seeing any.

Cross-Q. 56. Have you any recollection of seeing anything of the kind there?

A. Of posts, I have none.

Cross-Q. 57. Or anything like posts?

A. No, sir.

Cross-Q. 58. Have you any recollection of seeing any tubing, or logs bored out?

A. I have not.

Cross-Q. 59. But don't you think that, owing to your interest in the water question, that if there had been any tubings there, adapted for carrying the water from the spring to the house, you would have seen them; and can it be possible that, spite of your interest in the water question, you may possibly have seen them, and now may have forgotten it?

A. I had no personal interest in the water question, except as talked about by the members of the Kissinger family. I do not think that tubings would have been lying around without Mr. Kissinger pointing them out to me, and my recollecting the fact.

Cross-Q. 60. And if I understand you aright, it is because you don't now recollect seeing either the tubing lying around or the ram in position on that occasion, and because you think that if they had been there Mr. Kissinger or members of his family, under the circumstances, would have pointed them out, you now feel quite sure that you are not mistaken in your present belief that they were not there?

A. Basing my conclusions on the complaint of the family, of the difficulty of getting their water, the fact that there was no ram spoken of by Mr. Kissinger as being there, when pointing out to me the distance of the spring from the house, and the hill between the house and the spring, and the fact that there was no mention of tubing, to my recollection, makes me morally positive that I cannot be mistaken.

Cross-Q. 61. How many peaches did you gather in the peach-orchard, or about how many?

A. I am not positive. I think about a bushel.

Cross-Q. 62. Describe the path you pursued in going from the house into the peach-orchard.

A. We passed through the bars or gate into the peach-orchard, and Mr. Kissinger and myself went to about the center of the orchard. I cannot describe the path.

Cross-Q. 63. Where was this gate or the bars?

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A. We passed right directly west of the house; whether we passed over the fence with the top rail down, or through the bars entirely open, or through a gate, I cannot definitely say. We went directly west from the house into the orchard, and the center of the orchard took us southwest.

Cross-Q. 64. Then you don't remember whether it was a gate or a pair of bars?

A. No, sir.

Cross-Q. 65. Did you drive there when you made that visit?

A. I did.

Cross-Q. 66. How did you pass from the house down to the barn—across the meadow, or was there a private wagon-track?

A. I did not go to the barn.

Cross-Q. 67. You can't state whether there was a wagon-track there or not?

A. I saw them start with my horse and buggy towards the barn, as nearly as I can recollect, about the middle of the large open space in the rear of the house.

Cross-Q. 68. Do you recollect whether there was any track there?

A. I did not notice.

Cross-Q. 69. Did you drive in from the road to the house before you alighted, or did you get out of your buggy out on the main road?

A. I cannot positively say. If the gate were open I remained in the buggy; if not, I may have walked.

Cross-Q. 70. Did you notice any inclosures of fences in the region between the house and the spring?

A. I do not recollect. The fence between the house and the peach-orchard, I think, continued far enough to come between the house and the spring.

Cross-Q. 71. Were there any cherry-trees on the place?

A. Yes, sir.

Cross-Q. 72. Where were they located?

A. On the side or sides of the large open space where the house stood.

Cross-Q. 73. Which side, and how near the spring?

A. I cannot tell.

Cross-Q. 74. About how far from the spring?

A. I cannot tell. I remember seeing cherries from the road in driving up and down.

Cross-Q. 75. Were there any cherry-trees on the side of the large open

space, anywhere near the fence running down between the house and the peach-orchard?

A. I have no distinct recollection whatever of any definite location of any cherry-tree or cherry-trees.

Cross-Q. 76. How long were you at the spring?

A. I was not at the spring.

Cross-Q. 77. Where were you then?

A. I was in the rear of the house, when I had the location of the spring pointed out to me.

Cross-Q. 78. How far did it look from the house down to the spring?

A. I cannot measure very well with my eyes, but my recollections are that it was between one hundred and two hundred yards.

Re-direct by Mr. Storrow:

Q. Q. 79. As I understand, you and your wife, on the occasion referred to, went to Mr. Kissinger's, stayed there nearly half a day, had your horse put up, took a meal, eat as many peaches as you wanted, and carried home about a bushel of them. If there was anything in your relations with Mr. Kissinger which made it more likely that you would have done this in one year of your residence at Marysville rather than another, state what it was.

[Objected to, because calling for mere inferences.]

A. I don't know as there were any special relations between us in 1878 more than in 1877, except that I did not become intimately acquainted with him till the latter part of 1877 and the beginning of 1878.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
18th day of April, 1884.

FRED. M. OTT,

Examiner.

GEORGE E. ZEHNER.

Adjourned until April 19, 1884, at 10, A. M.

1848 TESTIMONY FOR COMPLAINANTS IN REJOINDER.

APRIL 19, 1884, 10, A. M.

Examination resumed.

Present, same counsel.

HENRY FOULK, *being produced, affirmed, and examined, saith:*

Examined by Mr. Storrow:

My age is sixty-eight; I reside in Rye township, Perry county, Penna., about five miles from Marysville; I am a shoemaker by trade, but I don't do much at it any more; I am farming now.

Q. 1. Do you live up the valley, on the road that leads up the valley from Marysville?

A. Yes, sir; on the main road from Marysville to Bloomfield.

Q. 2. What public office do you hold at the present time?

A. I am assessor of the township.

Q. 3. Have you ever been justice of the peace; and if so, how long?

[*Objected to as immaterial and irrelevant.*]

A. Twenty years.

Q. 4. Have you ever been county commissioner; and if so, how long?

[*Same objection.*]

A. Yes, sir; six years; that is, two terms.

Q. 5. Do you know George W. Kissinger, who formerly lived at Marysville?

A. I do.

Q. 6. About how long have you known him?

A. Of—well, he lived there two terms; I think it must be some fifteen years since I first got acquainted with him.

Q. 7. Thomas Draper, of Dover, Delaware, owned a farm on which Mr. Kissinger lived, at Marysville; do you know Mr. Draper, and about how long ago did you get acquainted with him?

[*This and all other questions relating to the times of Mr. Draper's visits to his farm, and the time when the ram was put into said farm, objected to as improper and incompetent evidence in rejoinder, for the reasons stated at length in the objection to question 21 in the deposition of William Ross, and the protest there entered is here repeated.*]

A. I got acquainted with Mr. Draper shortly after the war—some eighteen years ago, I guess.

Q. 8. Were you, about that time, or any other time, employed to

attend to any business for Mr. Draper about his Marysville farm; and if so, state generally what it was?

[*Same objection.*]

A. In order to give you full satisfaction, I should give you my first acquaintance with Mr. Draper—how it came that I got acquainted with him, I suppose. Mr. Lewis and Mr. Draper came to my house. Mr. Lewis introduced me to Mr. Draper. Mr. Draper then requested me to become his agent, to take charge of the farm, to rent it, and receive the proceeds, and to do with it as I generally thought best, leaving the whole thing to me to manage for him. I consented, and he then appointed me his agent. I acted then as his agent until he moved up to the farm from Delaware himself. I sold some lots for him—seven, I think, in all.

Q. 9. Are you at the present time employed or authorized by him to do anything about his remaining Marysville property; and if so, state what?

[*Same objection ; also as irrelevant and immaterial.*]

A. Some two months ago he wrote to me that I should sell the remaining two houses and three lots—I think there are three. This request was merely made to me by letter, and not by power of attorney.

Q. 10. It has appeared that Mr. Kissinger lived on Mr. Draper's farm at Marysville twice, and that the second time he lived there from the spring of 1874 to the spring of 1880; do you remember the fact of his living there the second time, along those years?

[*Same objection, and also because leading.*]

A. Yes, sir.

Q. 11. It has appeared that Mr. Draper came up to Marysville from time to time, while Mr. Kissinger lived on the farm; will you state whether or not you were in the habit of seeing Mr. Draper when he visited Marysville?

[*Same objection, and also because leading.*]

A. Nearly all the time; he would either come up to see me, or send me word to come down to see him.

Q. 12. Does the road from your house to Marysville pass by the Draper farm, or not?

[*Same objection.*]

1850 TESTIMONY FOR COMPLAINANTS IN REJOINDER.

A. Yes, sir; through the farm.

Q. 13. Was there any talk at any time about any of your family renting that farm; and if so, what was it?

[Same objection, and also because calling for conversations had with other parties.]

A. Well, Mr. Draper requested me to get my son-in-law, Reuben Wallace, to rent the farm.

Q. 14. Did your son-in-law rent the farm at that time; and if not, why not?

[Same objection and also because immaterial.]

A. He did not, for two reasons; the one was, he thought the farm too small, not knowing that the fields on the south side of the road belonged to the farm; the other was, that it was too inconvenient to the water. He didn't want his wife to drag the water up the hill from the spring to the mansion-house.

[The above answer objected to, also, because purporting to give the thoughts and reasons of another person.]

Q. 15. State whether or not your son-in-law mentioned these objections to you at that time.

[Same objection, and also because leading in affect, and also because clearly incompetent and calling for the conversations of outside parties and at a remote period of time.]

A. At the time I spoke to him about renting the place.

Q. 16. Did you afterwards mention either of these objections to Mr. Draper or not?

[Last objection repeated.]

A. I did.

Q. 17. What did Mr. Draper say about them?

[Last objection repeated.]

A. Mr. Draper told me that he had intended to get a ram put in there at the spring to carry the water up to the house.

Q. 18. Where were you and Mr. Draper when you and he had this conversation?

[Same general objection.]

A. Mr. Draper and his lady paid us a visit at my house.

Q. 19. Where was your son-in-law living when you and he had this talk?

[*Same objection.*]

A. He was living in the valley in Rye township, on Mr. Keller's farm.

Q. 20. How long did he live on that farm at that time?

[*Same objection.*]

A. One year; and this conversation took place during that year that he lived there.

Q. 21. What farm did he move on to next, and how long did he live there?

[*Same objection.*]

A. Mr. Rinehart's farm, and lived on it one year.

Q. 22. What farm did he move to next, and how long did he live there?

[*Same objection.*]

A. John Rose's, and lived there two years.

Q. 23. What farm did he move on to next, and how long did he live there?

[*Same objection.*]

A. Emanuel Keller's farm, and lived there three years this spring.

Q. 24. As it is now the spring of 1884, that would make it that he lived on the Keller farm the first time from the spring of 1877 to the spring of 1878; was that the fact or not?

[*Same objection, and also because leading and argumentative.*]

A. That is correct, I guess.

Q. 25. Did you ever see the ram on the Draper farm to force the water from the spring up to the house?

[*Same objection.*]

A. I did.

Q. 26. State how you came to be on the Draper farm the first time that you ever saw it there.

[*Same objection.*]

A. Well, I guess I will have to give you a circumstance connected with it. Mr. Draper came to Marysville and sent word up to me that

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he would like to see me ; so I went down to see him, and I stopped at the house of Mr. Draper, and saw him there, and had a conversation with him there before the house. He then told me that he had got the ram in, and we would walk around and see it. We did so, and seen the ram—seen how it had been fixed. Mr. Draper then told me that they had got it in at last, but that it didn't prove quite satisfactory to him the way he would have liked to have seen it. Some part of the pipe wasn't covered ; I couldn't just say how much of it.

[Answer also objected to because giving the remarks of others.]

Q. 27. Will you please state whether the water was running up near the house, and what it was running into, and, as near as you can remember, how the pipe was arranged that the water was running out of?

[Same objection.]

A. The water was running then, but very slow. One end of the pipe was resting on a tub near the north-west corner of the house ; the water was running into that tub.

Q. 28. State whether or not you saw any such thing lying around as two or three hundred feet of old iron pipe, looking as if it had been taken out of the ground to be thrown away.

[Same objection.]

A. I did not.

Q. 29. Did you and Mr. Draper at that time go down together and look at the ram or not?

[Same objection.]

A. I answered that question ; when I came to the Draper house, me and him had a conversation, and he said we would go around and see it, and so we did go around and see the ram ; I stated that before.

Q. 30. What kind of a place was the ram set in ?

[Same objection.]

A. There was a square wall built some little distance below the spring.

Q. 31. Was this wall above ground, or sunk in the ground ?

[Same objection.]

A. It was sunk in the ground and raised up, if my memory serves me right, level with the ground, I think. It was, maybe, some three or four feet deep.

Q. 32. At the time you were there on this visit, had the ram been recently put in or had it been in several years, according to your understanding and knowledge at the time?

[Same objection, and also because incompetent and not calling for facts within the personal knowledge of the witness, but for the inferences and opinions of the witness.]

A. It couldn't have been there long, from the fact that I know it wasn't there in the spring when Draper was up to my house—him and his lady. I might say that I don't know whether it was in the spring or sometime in the summer that they were there. I am not positive about the time.

Q. 33. When you met Mr. Draper at Mr. Kissinger's, and you and he looked at the ram, as you have stated, did you see any other member of Mr. Draper's family there; and if so, which one? State the facts about it.

A. I did. As I was leaving, Mr. Draper remarked that Jennie, his daughter, was in the house, and if I didn't want to see her, or something to that amount. I told him I did; and so I went into the house, saw her, and had a conversation with her.

Q. 34. State whether or not you ever saw Miss Jennie Draper at Mr. Kissinger's at any other time.

[Same objection.]

A. I did not. It was the only time that she was up, to my knowledge.

Q. 35. After you had talked with Miss Jennie Draper on that visit, as you have stated, did you go home; and did you go home alone, or did anybody go with you?

[Same objection.]

A. After we talked awhile I told Mr. Draper I would have to go home, as I wanted to go to Bloomfield, the county seat of Perry county, the next day. He then remarked that he wouldn't stop to go along with me if I had no objection—or something to that amount—and go along with me to Bloomfield. He said that he had some business up, which I think, if my memory serves me right, he said was about some judgments that he had on the county docket—to see about them. He went along with me home, and the next day we went to Bloomfield. He came along home with me then, and staid with me over Sunday, and on Monday morning I took him home down to his farm.

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Q. 36. What day of the week was it that you and Mr. Draper went to Bloomfield on this visit?

[*Same objection.*]

A. On Saturday.

Q. 37. Do you remember any particular person whom you and Mr. Draper saw at Bloomfield that Saturday; if so, please state who it was?

[*Same objection, and also as immaterial.*]

A. Mr. Sponsler—the attorney, William A. Sponsler—there are two Sponslers there.

Q. 38. Was this time when you saw the ram with Mr. Draper before, or after the talk with your son-in-law about renting the Draper farm, as you have testified?

[*Same objection.*]

A. I don't exactly understand that question. Oh, yes; I see now. It was after we had the conversation about Wallace renting the place.

Cross-examined, de bene esse, by Mr. Jacobs:

Cross-Q. 39. When was Reuben Wallace married to your daughter?

A. In 1863; I don't remember the month.

Cross-Q. 40. Where was he living and what was he doing immediately prior to the time when, as you say in your 19th answer, he was living in the valley in Rye township on Mr. Keller's farm?

A. He was farming his own property in Wheatfield township, Perry county; that is, when he lived the first time on Keller's farm; he is living on Keller's farm now.

Cross-Q. 41. How long had he been farming his own farm in Wheatfield township prior to moving on to Keller's farm the first time?

A. That is hard to tell; it is part of the old homestead farm that he inherited. He was born there and lived there until he moved on to the Keller farm; his sisters kept house for him after his father died. I want to correct that—a thought just struck me. After he was married to my daughter he moved on my farm and lived there one year until he built a house on his own property and then he moved back into his own house.

Cross-Q. 42. How long after he was married to your daughter did he move on to your farm?

A. If my memory serves me, he was married in September and then moved on my farm the next spring following.

Cross-Q. 43. After he moved back to his own farm how long did he remain there before moving on to the Keller farm the first time?

A. He was married in 1863, and moved on to my farm in 1864 and lived there one year and then moved back to his own farm; and I think it was 1867 that he moved on to Keller's farm. I wouldn't be positive about it.

Cross-Q. 44. When Mr. Draper moved up from Delaware on to his farm at Marysville, I suppose you and he were on quite friendly terms, were you not?

A. Yes, sir.

Cross-Q. 45. You saw each other pretty often, did you not?

A. We did.

Cross-Q. 46. He visited at your place whilst he lived on his farm, I suppose; did he not?

A. Yes, sir.

Cross-Q. 47. And you visited at his place during the same period, I suppose; did you not?

A. Yes, sir; we have always been sociable since I first got acquainted with him.

Cross-Q. 48. His family, whilst living at Marysville, I suppose, visited your family; did they not?

A. Not so frequently; at different times.

Cross-Q. 49. And your family visited his sometimes during the same period?

A. I don't remember of my wife being down more than once; she has always been in delicate health, and doesn't get much away from home; I remember of her being there once; she might possibly have been there oftener, but I do not remember.

Cross-Q. 50. Did Mr. Draper and his family ever live upon his farm at Marysville more than once?

A. I think not.

Cross-Q. 51. How long did they live there?

A. That I couldn't tell.

Recess until 2, P. M.

Cross-Q. 52. When did Mr. Draper move on to his farm?

A. That I couldn't tell.

Cross-Q. 53. When did he move away from it?

A. That is just the same. I couldn't state that either.

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Cross-Q. 54. When did your agency for him, concerning which you testified in your eighth answer, begin?

A. It began at the time Mr. Draper and Mr. Lewis came to me after Mr. Draper got the farm—directly after the war. I can't fix the date. He came up and asked me to take charge of the farm, and look after it; and I consented, and he made me his agent, and went down to Delaware and sent me up a power of attorney. If I had known you would have asked me these questions, I would have referred to that, and that would have told you all about it.

Cross-Q. 55. When did that agency cease?

A. At the time Mr. Draper moved up to Marysville, which date I cannot fix.

Cross-Q. 56. Your memory of dates is not very good, is it?

A. No, sir; it is something I could never remember—dates—unless I had something to refer to.

Cross-Q. 57. When Mr. Draper came up to visit his farm at Marysville after he had moved his family back to Delaware, you generally got to see him, did you not?

A. I did.

Cross-Q. 58. I suppose you could not, of your own recollection, tell when Mr. Kissinger moved on Mr. Draper's farm, or when he moved away, could you?

A. No, sir.

Cross-Q. 59. Can you give us any idea of how often Mr. Draper visited his farm whilst Mr. Kissinger lived on it?

A. I could not, but it strikes me he was up once or twice a year; I think probably he was.

Cross-Q. 60. Was he up the same year that Mr. Kissinger moved on to the farm?

A. He was up in the forepart of the spring, and I have a little idea that he was up at the time Mr. Kissinger moved on the farm. I wouldn't say positive, but I think he was.

Cross-Q. 61. Was he up during the summer, or fall of that year?

[Complainants' counsel object that the question lies outside of the line of the examination-in-chief, and object to this attempt by defendants to prove part of their case by a witness who testifies that he has no positive and definite recollection upon the subject inquired of. Defendants' counsel protest against the objection as an undue interference with his cross-examina-

tion of the witness, and as a suggestion to the witness of the form of answer.]

A. It is hard for me to tell what part of the year he was up; I know he was up frequently while Mr. Kissinger lived there, but to fix upon what part of the year, that I couldn't pretend to do.

Cross-Q. 62. But your recollection is, as I understand it, that Mr Draper was up sometime during the first year that Mr. Kissinger lived upon the farm; is that correct?

[*Same objection.*]

A. That is correct; he was up the first year, I think, twice; it is hard for me to tell the years he was up, but I know he was up frequently on the farm while he lived there; what years and what times of years I couldn't tell.

Cross-Q. 63. I suppose you do not know how many years have elapsed since Mr. Kissinger moved on to Draper's farm, do you?

A. No, sir.

Cross-Q. 64. Nor how many years he lived there, do you?

A. No, sir.

Cross-Q. 65. Nor how many years have elapsed since he moved away from there, do you?

A. No, sir.

Cross-Q. 66. I suppose you met Mr. Draper on his farm more than once while Mr. Kissinger was living there, did you not?

A. I met Mr. Draper on his farm and I met him in Marysville, and he came up to my house sometimes without my seeing him down there at all.

Cross-Q. 67. You could not tell, though, how often you met him on his farm whilst Mr. Kissinger lived there, could you?

A. No, sir.

Cross-Q. 68. What particular business did Mr. Draper want to see you about at the time of the visit to his farm, when you say you saw the ram?

A. I don't know as he had any particular business at all with me; it was his practice when he would come up to either come up to see me, or else send word to me; I once had bought some phosphate from him; but that, I guess, don't matter. He also wanted me to sell some kind of an oil for him once. And then he had some land in the West that he came up to see me about once; and such things we would talk

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about when we would be together; sometimes he had business with me and other times he had not, but merely wanted to see me.

Cross-Q. 69. But you do not remember any particular thing about which he wanted to see you at the time of this visit, do you?

A. No, sir.

Cross-Q. 70. Do you remember any particular thing that was talked about?

A. Indeed I do not. It is not possible to tell everything we talked about.

Cross-Q. 71. How long were you at Draper's farm that time?

A. What time have you reference to?

Cross-Q. 72. I refer to the time when you say you saw the ram.

A. It might have been two hours, or something like that.

Cross-Q. 73. What time of the day did you go there?

A. I don't remember; but I know it was near supper-time when we got home, and I was there about two hours, or maybe two and a half. It might have been about one o'clock when I got there, or somewhere about that time.

Cross-Q. 74. Was it warm, or cold weather?

A. It was in the fall of the year; I couldn't just say whether it was warm that day or cold. You know the weather is changeable in the fall. I couldn't tell whether it was cold that day or warm.

Cross-Q. 75. Whom else did you see at the Draper farm on that occasion besides those whom you have named, namely, Mr. Draper and his daughter?

A. I saw Mrs. Kissinger and her daughter, I think. I don't remember that I saw anybody else at the time. I can't remember of seeing Kissinger.

Cross-Q. 76. Which daughter do you mean?

A. Kissinger's daughter; well, there was a young lady there talking to Miss Jennie, and I think it was Mrs. Kissinger's daughter; I wouldn't say, but I think it was.

Cross-Q. 77. It has appeared in evidence that George W. Kissinger had three daughters; were you acquainted with them?

A. I was not acquainted with the family more than Mrs. Kissinger and the old gentleman. The children I have no recollection about in particular.

Cross-Q. 78. Did you see no men about the place besides Mr. Draper?

A. I told you I have no recollection of seeing anybody besides Mrs.

Kissinger and her daughter and Mr. Draper—that is, if it was her daughter, and I judge it was.

Cross-Q. 79. Were you over the whole place with Mr. Draper on that afternoon?

A. No, certainly not.

Cross-Q. 80. Were you in the barn or any of the out-houses?

A. No, sir; I was no place, only in front of the house; me and him had a talk there and he said we would go around the house and see the ram, and so we did; and then we came back and went into the house and saw Miss Jennie and talked to her, and then went home; I was nowhere about the place but there.

Cross-Q. 81. Then I suppose there might have been almost any quantity of old iron pipe about the place without your seeing it, might there not?

A. There might have been somewhere, but I didn't see any.

Cross-Q. 82. All that you can say upon the subject is that you don't remember having seen any; is that not correct?

A. That is correct. We went down to the fountain where the ram stood, and then we came up along where the pipes were laid to where it emptied into the tub, and then we stood and watched a while and then went around the house to go home, and then he mentioned about Miss Jennie and we went in.

Cross-Q. 83. And that, together with your conversation in front of the house, occupied about two hours and a half according to your recollection, did it?

A. About that, I suppose; it might have been somewhere about that; I can't tell exactly.

Cross-Q. 84. How came your son-in-law to leave his own farm and go upon that of Mr. Keller, as you have testified?

A. He sold his farm in the fall of the year.

Cross-Q. 85. How long have you been living on the place where you now reside?

A. Fifteen years this spring.

Re-direct by Mr. Storrow:

Q. 86. In your testimony-in-chief this morning you said that your son-in-law lived on Keller's farm at the present time, and lived there also about six or seven years ago, which made it in 1877. I find that on cross-examination the examiner has got it written down that

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you said he lived on Keller's farm in 1867, which would be some sixteen years ago. Was that a slip of the tongue, or was it sixteen years ago when he lived there?

[Objected to as argumentative, outrageously leading, and incompetent, particularly in view of the fact that, excepting in the answer referred to, the witness has failed to fix any dates unless assisted by leading questions by complainants' counsel, and also in view of the witness' own testimony with regard to his memory for dates.]

A. Oh, no; that is a mistake; it was in 1877, and then there is another mistake: He did not live on the same farm that he lives on now in 1877; it was a small farm of Mr. Keller's that he moved on. He sold his farm late in the fall, and couldn't get no large farm, and he only rented that farm of Mr. Keller's for a shift for a year.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
19th day of April, 1884.
FRED. M. OTT,
Examiner.

H. FOULK.

[From the justice's docket of Theo. Fenn, Esq., deceased, the complainants put in evidence the whole record of the following cases, and request the examiner to copy them upon the record.]

The following appears on page 1 of said docket:

Commonwealth of
Pennsylvania.
Henry Gamber vs
Stiles L. Fessler
Justices' costs
Warrant
Information
Docket entry
Postponement
Special bail
Subpoenas (2)
Add. names
12 oaths

Criminal Action—Embezzlement.
Warrant issued May 24, 1878, on oath
of Henry Gamber, and placed in the
hands of Joseph Gensinger, Deputy Con-
stable. May 25, 1878, Deft. is brought
up and asks for a postponement of a
hearing until Tuesday afternoon, the 28th
inst. On agreement, hearing the case
was postponed to Saturday June 1st at
2 o'clock P. M. Leonard Swartz appearing
and becoming bail for the Dft. in the sum
of \$400 for his appearance. Subpoenas
taken out by Plff. and Deft. June 1st,
1878 2 o'clock P. M. parties appeared and

DOCKET ENTRIES.

1861

Hearing	.56	after hearing the evidence and considering the same, now June 8, 1878 is held
	3.95	in the sum of \$200 for his appearance at Court to answer the charge preferred against him.
Constables' costs		
Ex Warrant	.50	
Mileage	12	
	.60	

The following appears on page 115 of said docket:

Commonwealth of	Criminal Action.
Penna. vs.	Warrant issued Oct. 7th, 1878 on oath of
William Ross,	Henry Musser that William Muckler, Harry
William Muckler,	Straw, Bert Myers, Jacob Radabaugh, Harry
Harry Straw,	Keim, Jacob Walters, Edward Ross and
Bert Myers,	Martin Clinger did on the 6th day of Octo-
Jacob Radabaugh,	ber 1878 it being the Sabbath day trespass
Harry Keim,	upon his (deponents) property—going into
Jacob Walters,	his "chestnut grove"—to gather chestnuts
Edward Ross,	and annoying him by breaking the Sabbath
Martin Clinger,	and using bad language and oaths and dis-
	turbing the Peace. Placed in the hands of
	Henry Gamber, Constable.

Justices' costs	
Information	.50
Docket entry	.20
Warrant	.40
Subpoena	.25
3 add. names	.15
Hearing	.50

Lewis Clinger
John Ross
Charley Hipple
Wilson Hipple
West Bell
Ed. Clinger

Constable's costs	
Ex Warrant	.50
Mileage	.12
Serv. Subpoena	.30
Mileage,	.12

The following appears on page 175 of said docket:

Commonwealth	Criminal action. Charge of conspiracy.
vs.	Warrant issued Dec. 3, 1880 to O. H. Miller
James Champion	Constable of Marysville on oath of Jacob
Emanuel Keller	

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Chas. Barshinger and Henry Myers		Kinert of Rye township. charging the debts. with having fraudulently and maliciously conspired together to secrete and remove tobacco belonging to the said James Cham- pion with intent to defraud the creditors of the said James Champion.
Information	.42	Dec. 6, 1880 Debts. brought up by Con- stable Miller and enter security in the sum of \$50 Fifty Dollars each to appear on the 17th inst at 12 o'clock M. to answer the above charge (hearing).
Docket entry	.20	
Warrant	.40	
Recognizances	1.00	
Not. to pros.	.15	
Disch. Complaint	.40	
Satisfaction	.10	
C. Pd.	2.67	
Const. costs		Dec. 16, 1880 parties appeared, paid the costs of the suit, Justices and Arbitrators' and Constables. The costs to be paid over to the parties to which they belong.
Serv. warrant	2.00	Dec. 17, 1880 Received of Emanuel Kel- ler \$3.38 on acct. of costs.
Mileage	.84	Dec. 17, 1880, Received costs in full.
	2.84	Received Satisfaction.
Pd. C.	2.67	Jacob Kinert.
	5.51	Dec. 17, 1880, paid costs to Constable.

By consent, defendants' counsel was allowed to make his objection to the foregoing docket-entries at a subsequent time; which objection is now made, as follows:

The introduction of the above alleged docket-entries upon the record objected to; first, because no foundation has been laid for the same, and because the book from which said entries are copied has not been identified by any legal evidence whatever; and second, because immaterial, irrelevant, and incompetent for any purpose whatever, and particularly for the purpose of impeaching witnesses whose depositions were closed without any allusion to the charges contained in the above alleged docket-entries. The entry relating to Stiles L. Fessler is further objected to because it does not appear to be complete and does not show what disposition was made of the case. And in this connection counsel for defendants produces, and asks to have copied upon the record at this point, the affidavit of Henry Gamber, the prosecutor, showing the disposition which was made of the case, as follows:

State of Penna. }
County of Dauphin. } ss.

Before me the subscriber, one of the Notaries Public in and for the aforesaid County and State, personally came Henry Gamber, of Marysville, Perry County, Pennsylvania, and who being duly sworn according to law deposes and says that he is the Henry Gamber named as the

prosecutor in the case of the Commonwealth of Penna. vs. Stiles L. Fesler upon the docket of and before Theo. Fenn, J. P., deceased, charge of "Embezzlement." That he, deponent, entered the prosecution in the above named case upon the representations made to deponent by others and which were not sustained upon the hearing had before said Justice Theo. Fenn, and deponent was required to withdraw the said case and pay the costs of prosecution; the said case was never returned to court, nor trial other than before the said justice and with the result as above stated.

Sworn and subscribed to before }
me this 21st day of April, A. D., }
1884.

Stewart P. Keeling,
Notary Public. }

HENRY GAMBER.

[Seal.]

The said affidavit is hereby offered in evidence, to be marked "Exhibit Gamber Affidavit."

Complainants' counsel replies that the book in question was, during the cross-examination of William Ross, present in the examining room in the hands of defendants' counsel, and of W. K. Fenn, Esq., son of Theophilus Fenn, dec'd, in attendance at this examination to assist defendants' counsel; that at the close of the cross-examination complainants' counsel, in the presence of the examiner and the counsel, asked Mr. W. K. Fenn whether it was his father's docket, and whether he would show it to complainants' counsel, to which Mr. Fenn replied that it was, and handed it to complainants' counsel in the presence of the examiner and of the counsel on both sides. He further objects to the alleged affidavit as incompetent.]

PHILIP H. HEISLEY, being produced, sworn, and examined, saith:

Examined by Mr. Storrow:

My age is twenty-one; I reside three miles west of Marysville, Perry county, Pa.; I am a farmer.

Q. 1. Are you a brother of the witness Peter J. Heisley?

A. Yes, sir.

Q. 2. Do you remember the fact of two jobs of pipe-boring being done on your father's farm—one time when the logs were put in from the spring to the spring-house, and another time when they were repaired and some of them replaced?

[Objected to as leading.]

1864 TESTIMONY FOR COMPLAINANTS IN REJOINDER.

A. Yes, sir.

Q. 3. Look at the "Heisley Reaming Bit" now shown you, and state to whom it belonged.

A. It belonged to father, Philip H. Heisley.

Q. 4. What job did he have it made for?

[Objected to as leading, and also because no proper foundation has been laid for it, the witness not having been shown to have had any means of knowledge on the subject.]

A. He had it made to ream out the ends of the logs to fit the joints.

Q. 5. For the first job of boring or the second job of boring?

[Same objection.]

A. The second job of boring.

Q. 6. State whether or not this reaming bit was used on that second job of boring.

A. It was made for that purpose, but I don't know how much it was used; I don't remember.

Q. 7. Were you living at home when those two jobs of pipe-boring were done?

A. Yes, sir.

Q. 8. Where did you understand, at the time, that this reamer was made?

[Objected to as incompetent, because not inquiring for facts but the mere understanding of the witness.]

A. The reamer was made at Mr. Patterson's.

Q. 9. Were you at home at the time when Mr. Brooks got this reamer from your father's place a month or six weeks ago; and if so, state how it came to be shown to him and all about it?

[Objected to as leading, the witness having shown no knowledge of the time when the reamer was obtained by Mr. Brooks.]

A. Yes, sir; Mr. Brooks came to our place and asked to have his horse fed. My brother William went out and fed his horse, and I came to the barn by that time and asked Mr. Brooks whether he had dinner. He said he hadn't. I asked him to go along to the house and have dinner, and we went to the house and he pulled off his coat and sat down. He asked me then why it was that there was a different opinion about the date of putting in those pipes, or something to that effect, and asked whether we hadn't some book where we could find the date, and my

brother Charles said that we had a reamer made at Mr. Patterson's shop at the time we put them in the last time; and Mr. Brooks asked me to drive up to Mr. Patterson's, and I hitched up the horse and drove up to Mr. Patterson's. I asked whether Mr. Patterson was at home and Mrs. Patterson said he wasn't. Mr. Brooks went into the house and I tied my horse and came in, too. Mr. Brooks asked whether he couldn't see Mr. Heisley's account in his books where he had charged against him. Mrs. Patterson opened the table drawer and gave him the books. Mr. Brooks looked through the books and didn't find what he wanted to see. He asked her whether she hadn't any earlier books, and she said she supposed they had but she didn't know where they were. She said perhaps Mr. Patterson knew where they were. So Mr. Brooks asked me whether I wouldn't go down to Mr. Adams' and bring Mr. Patterson up. I went and brought him; and after I had brought him he went in and I hitched my horse and went in, too. Mr. Brooks told him what he had come for and Mr. Patterson went and got the books and showed them to Mr. Brooks. Mr. Patterson and Mr. Brooks looked through the books and they found the date when the reamer was made; and they looked through them carefully twice, and found that that was the only place that it was charged. And we had taken the reamer along, and Mr. Brooks showed the reamer to him and he remembered well all about making it; and he thought that was the only thing of the kind he ever made at that place.

[The whole of the above answer objected to because containing a confused jumble of hearsay, inference, and supposition, from which it is impossible to separate the facts.]

Cross-examined by Mr. Jacobs:

Cross-Q. 10. I suppose you do not know who made the reaming bit shown you a little while ago except from what you have heard others say about it, do you?

A. I don't know just who made it, but I know it was made at the blacksmith-shop. I suppose Mr. Patterson done it, for he was the mechanic.

[Answer objected to as irresponsible.]

Cross-Q. 11. I ask you whether, of your own knowledge, apart from what any one has told you on the subject, you know who made it?

A. I know it of my own knowledge without anybody telling me.

Cross-Q. 12. Did you see it made?

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A. No, sir; I wasn't looking at the blacksmith when he was making at it.

Adjourned until Monday, April 21, 1884, at 2, P. M.

MONDAY, April 21, 1884, 2, P. M.

Examination resumed.

Present, Mr. Howson for complainants, and Mr. Dixon and Mr. Melville Church for respondents.

Cross-examination of Philip H. Heisley continued by Mr. Dixon:

Cross-Q. 13. You have stated that you were living at home when both these two jobs of pipe-boring were done; how long were the lengths of pipe that were put in on the first job in 1874?

A. They were different lengths; some about ten, and some, perhaps, fourteen feet.

Cross-Q. 14. How were they joined together?

A. The way they were joined together, the one end was reamed out, and the other was sharpened and drove in.

Cross-Q. 15. Why was one end reamed out?

A. It was reamed out for the purpose of fitting the other one into that one.

Cross-Q. 16. That is, if I understand you, the end of one log was reamed out so that the sharp end of the next log could run into the first log; is that correct?

A. Yes, sir.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
21st day of April, 1884.

FRED. M. OTT,
Examiner.

P. H. HEISLEY.

GEORGE R. MYERS, *being produced, sworn, and examined, saith:*

Examined by Mr. Howson:

My age is twenty-seven; I reside in Fishing Creek valley, Perry county, Penna.; I am a carpenter, and also teach school.

Q. 1. How long have you been living in Fishing Creek valley and carpentering and teaching school?

A. Since October, 1880.

Q. 2. If before going to live there in October, 1880, you ever lived in the same Fishing Creek valley, please state when you went to live there.

[*Objected to as leading.*]

A. At Christmas, 1875.

Q. 3. How long after Christmas, 1875, did you continue to live there on that occasion, and what was your occupation during that time?

A. Till the 13th of March, 1876; firing the engine for a portable saw-mill.

Q. 4. Whose portable saw-mill?

A. A. H. Zorger's.

Q. 5. And you continued in his employment, did you, until you left there, March 13th, 1876?

[*Objected to as leading.*]

A. Yes, sir.

Q. 6. While living in Fishing Creek valley and working for Mr. Zorger during the time you have stated, did you or not become acquainted with Mr. Philip H. Heisley, and with Mr. Heisley's family?

[*Objected to because clearly leading as to the time.*]

A. I did.

Q. 7. With which of the members of Mr. Philip H. Heisley's family did you first become acquainted, and where?

A. Joe, at Zorger's saw-mill.

Q. 8. What was Joe doing there when you became acquainted with him?

A. Driving team.

Q. 9. How long, or about how long, after you went to work for Mr. Zorger was it that you made Mr. Joseph Heisley's acquaintance?

A. A few days.

Q. 10. After that did you, or not, visit the family of Philip H. Heisley, Joseph Heisley's father?

[*Last objection repeated.*]

A. I did.

Q. 11. How, if at all, are you related to, or connected with, the Heisley family?

A. Connected as a son-in-law of Mr. Philip H. Heisley.

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Q. 12. When and where did you make the acquaintance of the lady who is now your wife, and when did you begin paying attentions to her?

[Objected to as immaterial.]

A. I got acquainted with her at church about a week after the time I first got there, and began paying attentions to her about the 5th of January, 1876, at Perry county, of course.

Q. 13. While paying attentions to Miss Heisley after the beginning of January, 1876—did you, or not, frequently visit the house of her father?

A. I did.

Q. 14. You have stated that you moved away from Fishing Creek valley that time in March, 1876; where did you go to?

A. To Mount Palatine, Putnam county, Illinois.

Q. 16. After moving to the State of Illinois in March, 1876, how long did you continue to live there?

A. About three years.

Q. 16. Where did you go to then, and when was it?

A. I went East (to York county, Pennsylvania) some time in December—about the 19th, or somewhere along there—1878.

Q. 17. If you have in your possession any letter or letters by which you fix the time at which you lived in Fishing Creek valley before going West, and the time at which you were living in the West, will you please produce them, and hand them to the examiner, that they may be made exhibits in this case?

A. Yes, sir; here they are.

[Witness produces two letters, with the envelopes containing the same, and which are marked respectively, "Complts' exhibit Myers' letter and envelope No. 1, and Myers' letter and envelope No. 2."]

Objection is made to the consideration of said letters, because immaterial and inconclusive as evidence, one of them being dated January 9, 1876, and the other being dated May 1, 1876, without dating from any place, and unsigned, but having two names indorsed upon its back.]

Q. 18. Who is the George R. Myers to whom the envelopes containing these letters are addressed?

A. I am.

Q. 19. Where were you living when you received the letter and

envelope "Exhibit Myers etc. No 1" and by whom was that letter written to you?

A. I lived in Perry county, Penna.; it was written by Joel Miller.

Q. 20. Who is Joel Miller, and how, if you know, came he to write you that letter?

[Objected to as immaterial.]

A. He was a school-mate of mine; I had written out to him to find out what wages was out there.

[Complainants' counsel requests that the letter and the marks on the envelope referred to in the foregoing question and answer may be copied into the record.]

Objected to for the reasons above stated, and because the letter itself is the best evidence as to its contents.

The Examiner copies said letter and envelope as follows:

MT. PALATINE, ILLS., January 9, 1876.

Mr. Myers:

DEAR SIR your letter was received the 6th and its contents perised with pleasure. In regard to your question about coming West you can do as you think best but I advise you to come as you can make more Money here than you do there. About wages it is hard for me to tell what they will be but Judging from last year they will be from 20 to 25 dollars per Month. The average about 22 but you could not Expect more than 20 the first Summer. And as for A place It is to soon to look yet as people are not in the notion of hiring yet. But I will try and get you In somewhere near where I stop. I don't know what I will do yet I have been offered 25 dollars per month but have not A xcepted it yet. And if I can get land to farm they can't hire me for no 25 dollars as I think I have Served my time at that trade. I am at work now for 1.00 dollar A day but that will soon be all and then I don't know what I will do loaf I guess that is good busi if well folowed. A word about the weather it is a strange kind of winter we have had real April weather for three weeks but they have put new hand at the Bellows this after noon it blew up cold and is snowing some this Eve last Night we had quite A thunder shower and all so one on New years Day. Mud has been Abundant for A month but it will freez hard to Night. About running that Steem Engine you had better bee A little careful or it it will run you and blow you all up sky high. Ill bet some of them ball hill galls run you to Perry County for safety, is it not so. Now George if you mean to Come out dont be afraid of starting for that is the greatest part of all when once Started you will soon get here.

And perhaps by the time you write I can tell you more about wages and A place to work. And so the Fox took the Stayman. Well thats Bis right up to the handle isnt it but marry they will and so all I have

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to say is my Best respects to them Both. And when you get Married I will raise the roof about a feet.

I suppose I had better quit as you will get tired of this Noncense.
From your friend and well wisher,
Joel Miller."

The envelope in which the foregoing letter is enclosed is addressed as follows :

"George R. Myers,
Keystone P. O.,
Perry County,
Peuna."

and is post-marked "Mount Palatine, Ill. Jan. 11."

Q. 21. Where were you living when you received the letter and envelope "Exhibit Myers, No. 2?"

A. At John W. Price's, Palatine, Putnam county, Ill.

Q. 22. And by whom was that letter written to you?

A. H. J. Myers, of York county, Pa.

Q. 23. I notice at the foot of the envelope containing this letter the penciled words, "Care John Price;" who, if you know, is, or was, the John Price there referred to?

A. He was a farmer—the man whom I was living with.

[Complainant's counsel requests that the letter and envelope referred to be copied upon the record.]

Last objection repeated.

The Examiner copies the letter referred to as follows :

"May th 1876

—
1

Der sir I will take no time to rite mutch but I will let you no when I am coming I will start on next (*crossed out*) wednesday thirsdlay morning I will leave york and I am coming to (*illegible*) and you would Oblige me if you would meat me and I will be shure and com for I am all ready to start. (*The four remaining lines on that page are blank, and upon the third and fourth lines of the page upon the other side of the leaf the following names are written*):

"H. J. Myers,
George R. Myers "

The letter is enclosed in an envelope, which is addressed as follows :

"Mr. George R. Myers
Palentine P. O.
Putmen
County
Illinois"

At the bottom of the envelope, under the address, the following is written in pencil:

"Care John Price."

The post-mark is "York, Pa., May 2."]

Q. 24. You have stated that while you were living in Fishing Creek valley, Perry county, from December, 1875, to March, 1876, you frequently visited the house of Mr. Philip H. Heisley; if during those visits, or any of them, you heard anything said by Mr. Heisley or members of his family in reference to the condition of any water-pipes about the premises, please say what pipes were referred to and what the talk about them was?

[Objected to as clearly incompetent, and calling solely for hearsay statements, and that, too, upon remote matters.]

A. It was wooden pipes running from the spring to the spring-house. They were talking about them leaking all the time; that they would have to renew them that spring—put in new pipe. Do you want me to say who said this? P. H. Heisley, C. I. Heisley, also P. J.

Q. 25. Did you or not hear this talk about the leaking of the pipes, by members of the Heisley family, on more than one of your visits there?

[Objected to as leading.]

A. I did.

Q. 26. You have stated that you left Fishing Creek valley for the West in March, 1876, and that you worked for Mr. Zorger until the 13th of March; how soon after quitting work for Mr. Zorger did you start for the West?

A. I left on the 13th day of March, 1876.

Q. 27. How long before leaving was your last visit to the Heisley farm?

A. March 11, 1876.

Adjourned until April 22, 1884, at 10.15, A. M.

APRIL 22, 1884, 10.15, A. M.

Examination resumed.

Present same counsel.

Cross-examination of George R. Myers, de bene esse, by Mr. Dixon:

Cross-Q. 28. As I understand, you did not have a personal knowl-

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edge about these pipes, or about the repair or fixing of the pipes—did not see it done ?

A. No, sir.

Cross-Q. 29. Joseph F. Heisley has testified (p. 681) to a remembrance that the pipes on their place didn't do their work right after making the repairs ; that is, the repairs when the auger was used to bore the second time. Now, as far as you personally know, having no personal knowledge about the repairs on the pipes, the pipes may have been troubling them by leaking, and they may have contemplated renewing them that spring again, when you were visiting there ; is not that possible ?

[*Objected to as misconstruing the evidence of Joseph F. Heisley ; also, as not cross-examination, as argumentative, and asking for mere matter of opinion and not for fact.*]

A. Yes, sir.

Cross-Q. 30. When were you married to Miss Heisley ?

A. September 1, 1881.

Cross-Q. 31. Then it was about a year after you came back from the West to Pennsylvania, was it ?

A. Yes, sir.

Cross-Q. 32. And it was about five years after the time you have mentioned when you were about three months working for M. Zorger, was it ?

A. Yes, sir.

Cross-Q. 33. And it was about eight years ago from the present time that you were working for Mr. Zorger, was it ?

A. Yes, sir.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
22d day of April, 1884.

FRED. M. OTT,
Examiner.

G. R. MYERS.

J. J. KERR, being produced, affirmed, and examined, saith :

Examined by Mr. Howson :

My age is forty-eight ; I reside at Altoona, Blair county, Penna. I am a minister of the Lutheran denomination.

Q. 1. Did you or not at one time—and if yes, during what period of time—live at Duncannon, Perry county, Penna., and officiate as minister of a Lutheran church there?

A. Yes; from December, 1875, to in December, 1878.

Q. 2. How far, or about how far, is Duncannon from Marysville, Perry county?

A. Almost seven miles.

Q. 3. While living and preaching at Duncannon, did you or not, from time to time, conduct Lutheran services in the village of Marysville; and if yes, when did you begin to do so?

A. Yes; in 1877.

Q. 4. About what time in 1877 did you begin that work?

A. In the fore part of the summer.

Q. 5. Did you or not subsequently organize a Lutheran congregation in the village of Marysville; and if so, when was the organization effected?

A. Yes; about the first of February, 1878.

Q. 6. Down to what time did you continue to officiate as minister of that Lutheran congregation?

A. About the first of October, 1878.

Q. 7. When did you move away from Duncannon, and where did you go to?

A. The 11th of December, 1878; to Willmore, Cambria county, Penna.

Q. 8. Are you or not acquainted with Mr. George W. Kissinger, who formerly occupied what was known as the Draper farm, just outside of the village of Marysville? If yes, about when and what manner did you make his acquaintance?

A. Yes; in the winter of 1877-8 he attended the services held by me.

Q. 9. Did or did not Mr. Kissinger take an active part in the organization of the Lutheran church, which, as you have stated, was organized by you in the village of Marysville?

[Objected to as leading and immaterial, and also because obviously a second attempt to bolster up the character of one of complainants' witnesses.]

Complainants' counsel replies that the objection is an unwarranted and gratuitous insinuation, and is entirely untrue in point of fact.]

A. He did.

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Q. 10. During the time that you were officiating, as you have stated, in the village of Marysville, did you or not occasionally visit Mr. Kissinger at his home on the Draper farm; and if yes, down to what time did these visits of yours continue?

[*Objected to as leading.*]

A. I did till into the month of October, 1878.

Q. 11. If, during these visits of yours, or any of them, Mr. Kissinger said anything to you in reference to obtaining water for domestic purposes in his house, say what it was that he said to you on that subject.

[*Objected to as grossly incompetent and calling solely for hearsay statements of others in conversations that occurred six or seven years ago, and upon remote matters.*]

Complainants' counsel points to defendants' record in sur-rebuttal as illustrating the extreme slowness of defendants' counsel in waking up to the supposed objectionable character of evidence such as the question calls for.

Defendants' counsel, not having taken part in the case prior to the present sitting, and complainants' counsel having at his request pointed out an example in defendants' testimony of what he refers to, to wit: Q. 45 and 46 in the deposition of Andrew J. Traver, p. 551 of defendants' sur-rebutting testimony, states that it appears to him that the extreme slowness in waking up to the supposed objectionable character of such evidence seems to be wholly on the part of complainants' counsel, as no objection whatever was entered to those questions by complainants' counsel, leaving their competence unquestioned so far as complainants' counsel are concerned.]

A. He referred to it at different times—spoke of the distance and general inconvenience of getting the water, but expected that difficulty to be removed by getting a hydraulic ram.

Q. 12. Did he or not at any time up to your last visit there, tell you that he had actually got the ram?

[*Same objection.*]

A. No, sir.

Q. 13. If Mr. Kissinger had at any time told you that he had a hydraulic ram, would you or not have gone to see it and why?

[*Same objection, and also because calling solely for the inferences, deductions, and reasoning of the witnesses—"If he had told you," "would you?" etc.*]

A. I should most likely have gone to see it because I felt an interest in a question of convenience to him, and, from curiosity, would have liked to have seen it.

Q. 14. Did you or not during any of your visits to Mr. Kissinger see, in the vicinity of the house, any standing pipe for the delivery of water there, or water flowing from such a pipe, or any barrel or trough for the reception of water from such a pipe?

[*This, and all other questions bearing upon the time when the Kissingers put in their ram, objected to as improper and incompetent evidence in rejoinder, for the reasons stated at length in the objection to Q. 21 in the deposition of William Ross, and the protest there entered is here repeated.*]

A. No, sir; I have not the faintest recollection.

Q. 15. Are you acquainted with Mr. William K. Fenn, of Marysville, who is now present in the room?

[*Objected to as irrelevant and immaterial.*]

A. Yes, sir.

Q. 16. If Mr. Fenn visited you at your home in Altoona, when was it, and on what business did he come?

[*Same objection.*]

A. He called on me last winter some time; the exact time I do not remember. I wasn't aware at the time that he came on any particular errand when he came.

Q. 17. Did or did not Mr. Fenn, on that occasion, ask you whether, during the time that you were officiating at Marysville and visiting Mr. Kissinger, you had seen or known of a hydraulic ram upon the premises, or any pipes connected therewith?

[*Same objection, and also because leading.*]

A. He did.

Q. 18. What answer did you give Mr. Fenn on that subject?

[*Same objection.*]

A. My answer was that I had no recollection on the subject.

Q. 19. What, if anything, did Mr. Fenn show to you on that occasion to illustrate the subject he was inquiring about?

[*Same objection.*]

A. Well, he sketched an outline of part of the premises, and of a standing pipe.

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Q. 20. What, if any, request did Mr. Fenn make of you upon leaving?

[*Same objection.*]

A. That if I could recall to memory having seen said pipe and hydraulic ram I should communicate with him.

Cross-examined, de bene esse, by Mr. Church :

Cross-Q. 21. During the years 1875 and 1876 did you officiate at other places than Duncannon?

A. Am I to understand that in other charges? Yes, sir; if I go and assist a brother minister, we call that officiating, though it is not taking charge of the congregation.

Cross-Q. 22. Did you preach at Marysville in 1875?

A. No, sir.

Cross-Q. 23. Did you preach there in 1876? I mean on any occasion during those years.

A. Yes, sir.

Cross-Q. 24. Where?

A. In the United Brethren church.

Cross-Q. 25. Was the congregation of that church a Lutheran congregation?

A. No, sir.

Cross-Q. 26. What denomination were those people that you preached to at that time—I mean by that, were they different from the Lutherans in any radical respect?

[*Objected to as not cross-examination, irrelevant, and immaterial.*]

A. Composed of saints and sinners—a promiscuous congregation.

Cross-Q. 27. Were the services that you held at this church Lutheran services?

[*Same objection.*]

A. Lutheran preaching.

Cross-Q. 28. Am I to understand that your preaching down at Marysville in 1876 was with the view of organizing the Lutherans and building up a Lutheran congregation there?

A. My object was to ascertain the strength of the Lutheran element in that vicinity.

Cross-Q. 29. Were they weekday or Sunday services which you held there in 1876?

A. I think altogether week-day evening services.

Cross-Q. 30. At the time when you were holding these services with

a view to ascertaining the strength of the Lutheran element—I mean these services of 1876—did you not become acquainted with Mr. George W. Kissinger?

A. No, sir.

Cross-Q. 31. What Lutherans at Marysville did you become acquainted with at the time mentioned in the last question?

A. I don't think I became acquainted with any during the year 1876.

Cross-Q. 32. How frequently, during the year 1876, did you preach there?

A. I don't think I preached—not a half dozen of services.

Cross-Q. 33. How many times did you hold services there?

A. The same answer.

Cross-Q. 34. Did you observe Kissinger at any of the services held by you before you became acquainted with him?

A. Not that I remember.

Cross-Q. 35. How often did you visit Kissinger in the year 1877?

A. I don't think I visited him at all.

Cross-Q. 36. It is possible that you may have visited him, or at his house, during that year; is it not?

A. Not probable, because he was not a member of my church, but of another.

Cross-Q. 37. When did you first establish your congregation, or consider yourself established at Marysville?

A. I think somewhere about the beginning of February of 1878.

Cross-Q. 38. When did you begin to regularly preach at Marysville?

A. That would be immediately after the organization of the congregation.

Cross-Q. 39. You have stated, in your examination-in-chief, that Mr. George W. Kissinger attended services held by you in the winter of 1877-8; how early in that winter did you commence holding such services?

A. As nearly as I can remember, it was about in the neighborhood of Christmas.

Cross-Q. 40. Inasmuch as Mr. George W. Kissinger took, as you say, an active part in the organization of your congregation at Marysville, is it not quite probable that you visited either him or his family, or both, who, as you have stated, were previously members of another and different congregation, early in the year 1878?

A. Yes, sir.

1878 TESTIMONY FOR COMPLAINANTS IN REJOINDER.

Cross-Q. 41. To the best of your recollection, about how frequently were those visits made?

A. Perhaps two or three times in the late winter and early spring.

Cross-Q. 42. What were your objects in visiting them at those times?

A. To consult in regard to the interests of the church.

Cross-Q. 43. Were the visits that you made early in 1878 and thereafter, as you have testified, purely in relation to church matters, and made in your pastoral capacity?

A. To the best of my recollection, every visit was such.

Cross-Q. 44. When you approached the house, from what direction did you come and where did you enter?

A. I approached the house from the Fishing Creek valley road—I presume it is—and entered the front door.

Cross-Q. 45. Whereabouts within the house were you received by the family or by Mr. Kissinger?

A. In the front room to your right as you enter the front door.

Cross-Q. 46. Do you remember whether or not, on the occasion of these visits, or any of them, you walked about through the yard, or that portion of the premises lying to the rear of Mr. Kissinger's house?

A. No, sir.

Cross-Q. 47. Do you remember to, at that time, have observed, so as to now recollect them, any objects on that portion of the premises lying to the rear of the house?

[Objected to, the witness having already stated that he didn't walk about that portion of the premises lying to the rear of the house.]

A. No, sir.

Cross-Q. 48. Were your visits at Mr. Kissinger's house of short duration or protracted?

A. From an hour to three, four, or five hours sometimes.

Cross-Q. 49. At these visits were farm matters and matters of domestic economy generally discussed?

[Objected to as entirely too general and vague.]

A. No, sir; except incidentally referred to.

Cross-Q. 50. Could you state with positiveness whether the conversation, which you say took place in regard to the difficulty of getting water, occurred during the first, or the last, or other visits during the year 1878?

A. During the latter visits and the other visits. It was not referred to so distinctly in the beginning of my visits. It was during the summer.

Cross-Q. 51. With whom were your conversations held on this subject?

A. Mr. Kissinger.

Cross-Q. 52. Any one else?

A. Mrs. Kissinger referred to it on one or two occasions, to the best of my recollection.

Cross-Q. 53. Did they, or either of them, on the occasion of either of the visits in regard to which you have testified, say that a ram had been ordered, or that water-pipes had been prepared, or were being prepared, for use in connection with the water supply?

A. I could not say that he spoke of a ram being ordered—never, to my recollection; I have no remembrance of him, or any of them, saying at any time what particular work he was doing at the ram, whether at the pipes or the trench.

Cross-Q. 54. According to your best recollection, how many times did you visit Mr. Kissinger's place during the year 1878?

A. I suppose about six or eight times.

Cross-Q. 55. Have you any recollection of Mr. Kissinger, or any one else, telling you, or any one else in your presence, that any steps had been taken looking to the putting in of a ram, or of any contrivances for bettering the water supply?

A. Yes, sir; he came in on one occasion that I went there, and apologized for his appearance, stating that he was at work getting ready for the hydraulic ram.

Cross Q. 56. Did he state what he had been doing?

A. No, sir.

Re-direct by Mr. Howson :

Q. Q. 57. You stated, Mr. Kerr, in your direct examination, that your Lutheran services, held at Marysville in the year 1877, commenced in the early summer of that year; in your cross-examination you further stated that you commenced the particular series of services during which you formed Mr. Kissinger's acquaintance in the neighborhood of Christmas, 1877; was there or not an intermission—and if yes, about how long—between the series of services commenced in the early summer of 1877 and the particular series which you say commenced about Christmas, 1877?

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[*Objected to as leading.*]

A. There is a misunderstanding; I did not intend to say that I commenced a series of meetings in the early summer of 1877, but in the winter of 1877-8.

Q. Q. 58. Did you or not in the year 1877, and before the meetings referred to in your last answer, hold occasional Lutheran services in the village of Marysville?

[*Same objection.*]

A. Yes, sir.

Q. Q. 59. And at what time in the year 1877 did you commence to hold these occasional services?

A. The latter part of June or about the beginning of July.

Q. Q. '60. Was it upon one of your earlier or one of your later visits to Mr. Kissinger's house that he came in and apologized, as you state in your answer to cross-question 55, for his appearance, stating that he was at work getting ready for the hydraulic ram?

[*Objected to as leading, and indefinite as to time.*]

A. It was in one of my later visits—either the last or the next to the last—about the beginning of October.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
22d day of April, 1884.

FRED. M. OTT,
Examiner.

J. J. KEER.

Recess until 2.30, P. M.

Present, Mr. Smith and Mr. Storrow for complainants, and Mr. Dixon, Mr. Jacobs and Mr. Church for respondents.

Mrs. THOMAS DRAPER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Storrow:

Q. 1. Are you the wife of Mr. Thomas Draper, of Dover, Delaware, who has formerly testified in this case?

A. Yes, sir.

Q. 2. Do you know Mr. George W. Kissinger?

A. Yes, sir.

Q. 3. It has appeared that Mr. George W. Kissinger lived from the spring of 1874 to the spring of 1880 on your husband's farm, at Marysville. Did you, during that time, visit that farm with your husband, and stay at Mr. Kissinger's?

[This and all other questions relating to the times of Mr. Draper's visits to his farm, and the time when the ram was put into said farm, objected to as improper and incompetent evidence in rejoinder, for the reasons stated at length in the objection to question 21 in the deposition of William Ross; and the protest there entered is here repeated.]

A. I did. •

Q. 4. When did you make that visit—in what year and what part of the year?

[Same objection.]

A. In November, 1877.

Q. 5. If you have any letter which aids you to fix that date, will you please read the date of the letter, and state how it is connected in your mind with the visit?

[Same objection.]

A. February 8, 1878. On my return home—on my way home—I stopped off at Lancaster, to visit a school-friend of mine. Her daughter was lying very sick. On my return home, she wrote me this letter.

Q. 6. Had you written her between the time of your return home and the time of your receiving that letter?

[Same objection, and also because leading.]

A. Yes, sir.

Q. 7. Will you state whether you returned home from that visit to Marysville and Lancaster before Thanksgiving, or after Thanksgiving?

[Same objection.]

A. Before.

Q. 8. While you were at Marysville on that visit, do you remember whether any purchase was made for you at Marysville; and if so, what?

[Same objection.]

A. Yes, sir; a pair of shoes.

Q. 9. Where were they purchased—at whose store?

A. At Mr. Eppler's, I think.

Q. 10. Did you make any visit to the farm while Mr. Kissinger

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lived there the second time from the spring of 1874 to the spring of 1880, except this visit in November, 1877?

[*Same objection.*]

A. No, sir.

Q. 11. About how long did you stay at Mr. Kissinger's on that visit?

[*Same objection.*]

A. Four or five days, I think; I am not sure. It did not exceed a week.

Q. 12. While you were at Mr. Kissinger's on that visit in the fall of 1877, how did the family get their water from the spring for household use, and was there any hydraulic ram to throw the water from the spring up to the house?

[*Same objection.*]

A. They brought it in buckets from the old spring-house; I don't think there was any ram.

Q. 13. Do you remember whether Mr. Draper visited Marysville in the early part of 1877?

[*Same objection, and also because leading.*]

A. I am not sure, but I think he was up in the spring.

Q. 14. Do you remember whether in the Centennial year, 1876, Mr. Kissinger visited your husband's place in Delaware?

[*Same objection, and also because leading.*]

A. Yes, sir; he was there.

Q. 15. Did your husband go to Marysville during the Centennial year?

[*Same objection.*]

A. I think not.

Cross-examined, de bene esse, by Mr. Jacobs:

Cross-Q. 16. Do you know when it was that Mr. Kissinger moved upon your husband's farm at Marysville?

A. In 1874.

Cross-Q. 17. Your husband visited his farm frequently, did he not, whilst Mr. Kissinger lived upon it?

A. Not very.

Cross-Q. 18. How often, as nearly as you can tell?

A. I suppose he averaged about once a year.

Cross-Q. 19. Did he visit the farm the first year that Mr. Kissinger was on it?

A. I cannot say.

Cross-Q. 20. He had been up there several times before the fall of 1877, and whilst Mr. Kissinger lived on the farm, had he not?

A. I can't say just how many times.

Cross-Q. 21. Please give us your best recollection upon the subject.

A. I think he was up in the spring of 1877; I don't remember any other time.

Cross-Q. 22. I suppose, however, you would not be prepared to say that his first visit to the farm whilst Kissinger lived there was made in the spring of 1877, would you?

A. I am not.

Cross-Q. 23. What members of Mr. Kissinger's family did you see about the place at the time of the visit you have spoken of?

A. Mrs. Kissinger and two or three children.

Cross-Q. 24. Do you remember their names?

A. I do not. I was in the house very little.

Cross-Q. 25. Were they sons or daughters?

A. I think a son and two daughters.

Cross-Q. 26. It has been testified that Mr. Kissinger had three sons—George Franklin, Cyrus, and John Morris. Does this enable you to fix the name of the son whom you saw?

A. It does not.

Cross-Q. 27. I suppose you saw old Mr. Kissinger there, did you not?

A. I did.

Cross-Q. 28. Do you know whether the son whom you saw was married or single?

A. I judge he was single.

Cross-Q. 29. Besides Mr. and Mrs. Kissinger and the two daughters and one son, did you see any other persons about the farm whilst you were there?

A. I don't remember of any other.

Cross-Q. 30. You say that you were in the house very little; where did you spend most of the time during that visit?

A. I was one day up at Squire Foulk's, one day with Mrs. Al. Seidel, one day with Mrs. Funk, and part of a day at church.

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Cross-Q. 31. How much of your time, then, did you spend at Kissinger's during that visit?

A. I was only there mornings and evenings.

Cross-Q. 32. I suppose Mr. Draper went with you to Marysville, and came away from there with you, did he not?

A. He did.

Cross-Q. 33. During that visit did Mr. Draper drive away anywhere with Mr. Kissinger?

A. I think he did.

Cross-Q. 34. You had heard talk about the putting in of a ram upon the place before the fall of 1877, had you not?

A. I think I had.

Cross-Q. 35. Do you know how long before?

A. I do not.

Cross-Q. 36. You had lived upon your husband's farm at Marysville at one time, had you not?

A. We never lived on the farm.

Cross-Q. 37. You lived in the farm-house, did you not? I mean the stone farm-house up on the hill.

A. No, sir.

Cross-Q. 38. Whereabouts, then, in Marysville, did you live?

A. We had a house that stood up on the hill, at the lower part of the farm.

Cross-Q. 39. Was it near the valley road?

A. The valley road ran directly by it.

Cross-Q. 40. Did you live there before or after the stone house was built?

A. We lived there whilst it was being built?

Cross-Q. 41. Was the house in which you lived on the same side of the road with the stone house, or on the opposite side?

A. On the opposite.

Cross-Q. 42. And how far from it?

A. As near as I can guess at it, about a quarter of a mile.

Cross-Q. 43. The house in which you lived was down towards town from the stone house, was it?

A. It was.

Cross-Q. 44. During what years did you live there?

A. I think, in 1866 and 1867.

Cross-Q. 45. I infer from what you have said that during the visit to Mr. Kissinger's, concerning which you testified in your direct examination, you did not go about the farm much; is that correct?

A. It is.

Cross-Q. 46. Will you please tell me the name of the friend whom you visited at Lancaster?

A. Mrs. Benjamin F. Baer.

Cross-Q. 47. Who was with Mr. Kissinger when he visited at your husband's place in Delaware in the Centennial year?

A. I think he came alone.

Cross-Q. 48. Are you positive that none of the members of his family were with him?

A. I think I can say I am.

Cross-Q. 49. You were at home, I suppose, at the time, were you?

A. I was not at home the day that he came; I was away for the day only; I was there in the evening.

Cross-Q. 50. Where were you living at that time?

A. On the farm near Magnolia, about eight miles below Dover, Delaware.

Cross-Q. 51. I suppose that during your visit to Kissinger's you found that the farm had been considerably improved, in the way of buildings and otherwise, since you had left Marysville in 1867, did you not?

A. I didn't notice much improvement.

Cross-Q. 52. Did you not notice that any buildings had been put up in that time?

A. I think there had been some repairing done.

Cross-Q. 53. What repairing had been done?

A. Some work on the barn, I think.

Cross-Q. 54. That is all you noticed, is it?

A. Yes, sir.

Cross-Q. 55. I suppose you did not look around very much to see what improvements had been made, did you?

A. I did not.

Cross-Q. 56. Where is Mr. Draper at the present time?

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A. He is in Dover.

Examination taken, reduced to
writing, and by the witness affirmed
and subscribed to before me, this
22d day of April, 1884.

FRED. M. OTT.

Examiner.

ANNA E. DRAPER.

Miss VIRGINIA M. E. DRAPER, *being produced, affirmed, and examined,*
saith:

Examined by Mr. Storrow:

Q. 1. Are you a daughter of Mr. Thomas Draper, and of Mrs. Draper who has just testified?

A. I am.

Q. 2. It appears that they have a daughter generally called Miss Jennie Draper; is that you?

A. Yes.

Q. 3. Do you know Mr. George W. Kissinger who lived on your father's farm at Marysville?

A. I do.

Q. 4. It has appeared that he lived there from the spring of 1874 to the spring of 1880. Did you visit that farm with your father while Mr. Kissinger was there during those years.

[*This and all other questions relating to the times of Mr. Draper's visits to his farm and the time when the ram was put in on said farm objected to as improper and incompetent evidence in rejoinder, for the reason stated at length in objection to question 21 in the deposition of William Ross; and the protest there entered is here repeated.*]

A. Yes.

Q. 5. In what year, and what part of the year?

[*Same objection.*]

A. In 1878, in November.

Q. 6. If you have any letters which fix the date of that visit please read their dates, and state how they are connected with that visit?

[*Same objection.*]

A. I have two from Baltimore; one written November 7, 1878. Here is the envelope of it, which is addressed as follows:

DEPOSITION OF MISS VIRGINIA M. E. DRAPER. 1887

"Miss Virginia M. E. Draper,
Marysville,
Perry Co.,
Pa.

"^c/_o Geo. Kissinger." Post-marked at Baltimore, Md., Nov. 10.

The other is dated November 7th, 1878, at Baltimore. The envelope of the last mentioned letter is addressed as follows:

"Miss V. M. E. Draper,
Marysville,
Perry Co.,
Pa.

"care of Mr. Geo. Kissinger."

It is post-marked at Baltimore, Md., Nov. 7th.

[*The Examiner, by consent of counsel, notes that the contents of neither letter make any reference to where the recipient was.*]

Q. 7. Will you state whether, while Mr. Kissinger lived at Marysville, between 1874 and 1880, you made any other visit there, except the one in November, 1878?

[*Same objection.*]

A. No; I never was there any other time.

Q. 8. While you were there at that visit in November, 1878, was there a hydraulic ram on the place, to throw water from the spring up to the house?

[*Same objection.*]

A. There was.

Q. What was the condition of the ram and pipes—was the work all completed, or was it not completed?

[*Same objection.*]

A. It didn't look to me to be complete.

Q. 10. What was it that seemed to you incomplete?

[*Same objection.*]

A. The pipe was not in the ground; the end of it was propped up on pieces of board, and no upright piece was on to throw the water out.

Q. 11. How near the house, or how far from the house, about, was the end of the pipe that was propped up on pieces of board?

[*Same objection.*]

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A. It was in the back yard, but I couldn't tell you the distance.

Q. 12. Was there any talk between you and the family as to how they had previously got their water from the spring; and, if so, what did you say to them, or they to you, in substance, about it?

[*Same objection, and also because leading, and because calling solely for hearsay statements, and conversations with other of complainants' witnesses upon remote matters.*]

A. I was in the yard with one of the girls, and Mr. Kissinger drew my attention to the ram, and showed me how the water came up; and I remember asking him if they had been bringing water up the hill all this long time, and he said they had.

Q. 13. Do you know Squire Foulk, who lives near Marysville; and, if you do, please state whether or not you saw him at Mr. Kissinger's during your visit there?

[*Same objection as to question 4.*]

A. I know him, and I saw him there.

Cross-examination, de bene esse, by Mr. Jacobs:

Cross-Q. 14. I suppose you lived with your father and mother at Marysville, when they lived there; did you not?

A. I did.

Cross-Q. 15. When was that?

A. In 1867 and part of 1868, I think.

Cross-Q. 16. Did you live on or off of your father's farm?

A. Off of the farm.

Cross-Q. 17. Whereabouts?

A. We lived in Marysville.

Cross-Q. 18. How far from the house in which you visited Mr. Kissinger?

A. Not more than half a mile.

Cross-Q. 19. Was it as much as half a mile?

A. I don't remember that the distance was ever measured; it wasn't far.

Cross-Q. 20. Was it as much as a quarter of a mile?

A. I think it was.

Cross-Q. 21. Had the stone house in which you visited Mr. Kissinger been built or not when you went to live at Marysville?

A. No.

Cross-Q. 22. Had it been built when you left there?

A. It wasn't finished.

Cross-Q. 23. How much of it was done when you left there?

A. The walls were done; I can't say how much more.

Cross-Q. 24. How long were you visiting at Mr. Kissinger's at the time concerning which you have testified in your direct examination?

A. I arrived there on Monday, November 11, and remained until the following Friday evening.

Cross-Q. 25. Did you spend the whole of your time during that visit at Mr. Kissinger's house, or did you visit elsewhere also?

A. I spent one afternoon in town, and made a few calls, at different times, during my visit.

Cross-Q. 26. What members of Mr. Kissinger's family did you see at the farm during that visit?

A. Mr. and Mrs. Kissinger, and Kate and Lizzie, and their married daughter, Mrs. Zimmerman.

Cross-Q. 27. Didn't you see any of the male members of the family about there, besides Mr. Kissinger?

A. I saw all the hands that were employed on the farm, but I don't remember any of their names.

Cross-Q. 28. You were acquainted with all of the members of Mr. Kissinger's family, were you not?

A. Not intimately.

Cross-Q. 29. You knew them by sight, however, did you not?

A. Not until I went up there.

Cross-Q. 30. Then, as I understand you, Mrs. and Mr. Kissinger, and Kate and Lizzie, and the married daughter, Mrs. Zimmerman, were the only members of Mr. Kissinger's family whom you saw during the whole time of your visit there; is that correct?

A. I saw all that were home.

Cross-Q. 31. And those whom you have mentioned, and whom I have repeated in my last question, were all whom you saw; is that correct?

A. No.

Cross-Q. 32. What other members of the family did you see?

A. I saw all the men at the table; and I knew who they were at the time, but I don't remember them now; there were three or four others.

Cross-Q. 33. Those who have been mentioned, to wit: Mr. and Mrs. Kissinger, Kate, and Lizzie, and Mrs. Zimmerman, took their meals at the same table with you, did they?

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A. Mrs. Zimmerman did not, and the others only part of the time.

Cross-Q. 34. Can you tell me whether any of the men whom you saw at the table were sons of Mr. Kissinger or not?

A. I cannot.

Cross-Q. 35. It has been testified in this case that Mr. Kissinger had three sons, namely: George Franklin, Cyrus, and John Morris; does the mention of these names enable you to say whether or not you saw any of Mr. Kissinger's sons during that visit?

A. I don't remember of seeing any of them; I heard of them; there wasn't more than one at home, if any.

Cross-Q. 36. Do you remember of ever meeting any of Mr. Kissinger's sons?

A. I suppose I saw them when we lived up there, but I didn't pay any attention to them.

Cross-Q. 37. Was Mr. Kissinger's family living at Marysville at the time you lived there?

A. I think they were on the farm when we left.

Adjourned until April 23, 1884, at 10, A. M.

APRIL 23, 1884, 10, A. M.

Examination resumed pursuant to adjournment.

Present, same counsel.

Cross-examination of Miss Virginia M. E. Draper continued by Mr. Jacobs:

Cross-Q. 38. Your father visited his farm at Marysville a number of times while Mr. Kissinger lived there, did he not?

A. Yes.

Cross-Q. 39. Can you give us any idea how often he visited there?

A. I suppose, on an average, once a year.

Cross-Q. 40. Do you know when Mr. Kissinger moved on your father's farm?

A. No; I do not.

Cross-Q. 41. You do not know how long he lived there, I suppose, do you?

A. No; I do not know exactly how long he was there.

Cross-Q. 42. Nor when he moved away?

A. No.

Cross-Q. 43. Do you know whether or not your father visited his farm the first year Mr. Kissinger lived there or not?

A. He was at Marysville nearly every year; I know that.

Cross-Q. 44. Do you remember of a visit which Mr. Kissinger made to your father at Magnolia?

A. I do.

Cross-Q. 45. When was that?

A. It was in '76—September—I think.

Cross-Q. 46. Were you at home at the time?

A. I was.

Cross-Q. 47. Was Mr. Kissinger there by himself or in company with some one else?

A. By himself.

Cross-Q. 48. How many days did he spend at your father's house on that occasion?

A. I think one day and two nights, but I don't remember exactly.

Cross-Q. 49. You have stated that your father was at Marysville nearly every year; I suppose you refer to the time while Mr. Kissinger lived on the farm, do you not?

[Objected to on the ground that this whole line of inquiry as to Mr. Draper's visits, other than the one on which the witness accompanied him, relates to matters entirely outside of the matter of the direct examination—is an attempt by the defendants to introduce evidence upon their own part of the case, and is addressed to a witness who does not profess to have definite or accurate recollection on the subject.]

A. I mean from the time we left the farm till we sold it.

Cross-Q. 50. He was up, then, I suppose, before Mr. Kissinger visited your father at Magnolia, was he not?

[Question objected to for the reasons stated above, and for the further reason that the defendants could have called Mr. Draper or his family during the sur-rebuttal if they desired.]

A. I think he was.

Cross-Q. 51. You stated that your father was up there nearly every year; was he up there within a year or two before Mr. Kissinger's visit to your father at Magnolia in 1876?

[Same objection.]

A. That is precisely the same question you asked me before—at least it amounts to the same.

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Cross-Q. 52. No; it is not the same. In my 50th question I asked you whether your father was up to his farm before Mr. Kissinger visited him at Magnolia, and you answered that he was. In my last question I asked you whether he was up within a year or two before Mr. Kissinger's visit to your father at Magnolia?

[*Same objection.*]

A. Yes, he was; but I think it is precisely the same thing.

Cross-Q. 53. Have you any idea how often he was up to his farm at Marysville within the year or two before Mr. Kissinger's visit to him at Magnolia?

A. I don't think more than twice within the two years.

[*This question is objected to on the same grounds.*]

Cross-Q. 54. I suppose your father might have been up there more than twice within that time without your remembering it, might he not?

[*Objected to as above, and as asking for mere guess-work.*]

A. Possibly he might have.

Cross-Q. 55. Prior to the visit of Mr. Kissinger to your father at Magnolia you had heard your father speak about his visit to Mr. Drawbaugh's shop, and his seeing a talking-machine there, had you not?

[*Same objections.*]

A. I don't remember to have.

Cross-Q. 56. Did you ever hear your father speak about a talking-machine or telephone he had seen anywhere?

[*Same objection.*]

A. I have, repeatedly.

Cross-Q. 57. Will you state the circumstances under which you heard him speak of it?

[*Objected to as above, and also because it is an attempt to introduce hearsay statements of the defendants' own witness, Mr. Draper, and without any limitation as to whether they were before he was visited by the defendants with reference to this suit, or testified therein.*]

A. I heard him speak of it after some gentlemen visited him at Dover, after we moved there.

Cross-Q. 58. Do you know who furnished the hydraulic ram to Mr. Kissinger?

A. I have heard my father say.

Cross-Q. 59. Who did he say had furnished it?

[*Same objection.*]

A. Mr. Drawbaugh.

Cross-Q. 60. Did he say who had ordered it?

[*Same objection.*]

A. I don't remember.

Cross-Q. 61. You had heard talk of the putting in of the ram a good while before the fall of 1878, had you not?

A. I had heard of forcing water up the hill to the house, but I did not hear in what way it was to be done.

Cross-Q. 62. You had heard of forcing water up the hill to the house a good while before 1878, had you not?

A. Yes.

Cross-Q. 63. Can you give us any idea how long before that time you heard of it?

[*Same objection as to 50, and as calling for guess-work.*]

A. When the stone house was first commenced on the farm.

Cross-Q. 64. When did you move to Dover?

A. January the second, 1880.

Cross-Q. 65. In your answer to 57th question you say that you heard your father speak of a talking-machine after some gentlemen visited him at Dover. Is that the first time you ever heard him speak of it?

[*Same objection.*]

A. I don't remember of his ever speaking of it before.

Cross-Q. 66. How old are you?

A. I can tell you how to find out.

[*Question repeated.*]

Cross-Q. 67. How old are you?

A. What has my age got to do with a ram on a farm?

[*Question repeated.*]

Cross-Q. 68. How old are you?

A. Well, I am twenty-four years old.

Cross-Q. 69. Then you were only fourteen years old in 1874, were you not?

[*Same objection, and also as merely argumentative.*]

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A. I suppose I was.

Cross-Q. 70. Were you, or not, at home all the time during the years 1874 and '5?

[*Same objection.*]

A. I was not at home all the time.

Affirmed to, and subscribed before
me this 23d day of April, A. D. 1884.

JOSHUA R. MORGAN,
Notary Public.

VIRGINIA M. E. DRAPER.

The counsel present admit that the foregoing deposition was commenced before Examiner Ott, and concluded by the undersigned by consent.

JOSHUA R. MORGAN,
Notary Public.

I certify that I administered the affirmation to the foregoing witness, April 22, 1884.

FRED. M. OTT,
Examiner.

Mr. Herman J. Eppler is called, and, at the request of defendants, his examination is postponed on account of Mr. Hill's illness.

Adjourned till two o'clock.

2.55, P. M.

Examination resumed.

Present, same counsel as before.

DAVID SMITH, *being produced and affirmed, deposes and says as follows:*

Q. 1. State your age, residence, and occupation?

A. My age is forty-seven in October; my residence is Fairview township, York county, this State; and my occupation is that of a carpenter.

Q. 2. How long have you lived there?

A. Where I live now? I moved there in the spring of 1870 or '71.

Q. 3. How far is your house from Yellowbreeches creek?

A. The nearest point to the creek is not over half a mile.

Q. 4. How far are you from the bridge called Zinn's bridge?

A. It may be one and a fourth miles; not over that, I don't think.

Q. 5. There is a foot-bridge at Zinn's fulling-mill, and a foot-bridge at Zinn's clover-mill; I understand that one of those bridges is generally known as Zinn's bridge, simply; which is it?

[*Objected to because the term is applicable to both bridges.*]

A. The clover-mill bridge.

Q. 6. Are you justice of the peace; and if so, how often have you been elected, and how long have you served?

[*Objected to as immaterial.*]

A. I am, sir, justice of the peace; I was elected in the spring of '77, and reelected in the spring of '82; the term of office is five years.

Q. 7. Will you state whether you have rebuilt or repaired either of those two Zinn's bridges since 1870?—and if so, turn to your books and point out the entries of the work you did on them.

[*This and all other questions relating to the floods upon the Yellow-breeches creek and the circumstances thereof objected to as improper and incompetent evidence in rejoinder, the subject having been embraced and the ground covered in the evidence taken by the complainants in reply, and the protest entered with the like objection to question 21 in the deposition of William Ross is here repeated.*]

Complainants reply that the defendants introduced a large amount of evidence cumulative in its character on this topic in their so-called sur-rebuttal, and the testimony of this witness is moreover directed to specific statements introduced by the defendants in their so-called sur-rebuttal.

A. Yes, sir; I did. In 1871, on June 8, 9, and 10, we built the fulling-mill bridge, very seldom called Zinn's bridge. Then the same year—I haven't the date, it was in August—I put up the clover or Zinn's bridge, in 1871. I helped Mr. Schell to put up the bridge. In 1875, June 4, 8, 9, and 10, I put up the Zinn bridge—charged that way in my book—the Zinn bridge the same year—I have no date to that, either—I repaired the fulling-mill bridge; and then in 1879, May 22 and 23, I worked two days at the fulling-mill bridge, and that is all of any account I have of any work I did at the bridges.

Q. 8. Did you, since 1870, do any work on either of those two bridges which is not charged in your book?

[*Same objection.*]

A. Yes, sir; I put a new walk to the fulling-mill bridge.

Q. 9. How much of a job was that, and why was it not charged in your book, and when was it?

[*Same objection.*]

A. Well, it wasn't very much of a job—simply took two 16 ft. boards

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and a few ledges—the supervisor and I settled the matter was why it was not put in my book—I can't remember what year it was.

Q. 10. Who was the supervisor ?

[*Same objection.*]

A. Adam Becker [or Baker.]

Q. 11. Will you read to the Examiner, to be taken down as part of your answer, the whole entry about your work of 1875 referred to in your seventh answer ?

[*Same objection, and objected to as incompetent, the books themselves being the best and only competent evidence as to their contents.*]

A. Book no 2—it would be page 90—reads :

1875 June 4 to $\frac{1}{2}$	.	.	.	1.00
June 8th, 9th, & 10th to $2\frac{1}{2}$ self,	.	.	.	5.00
June 8th, 9th & 10th $2\frac{1}{2}$ John,	.	.	.	3.75
repairing bridge at fulling-mill,	.	.	.	2.10
received pay of Adam Baker for above.				

[*The above answer objected to for the reasons stated.*]

Q. 12. In whose handwriting are these entries ?

[*Same objection as to question 7.*]

A. In my own handwriting.

Q. 13. Were they made at or about the time the work was done ?

[*Same objection, and also because leading.*]

A. Yes, sir.

Q. 14. Referring now to the job of rebuilding Zinn's bridge, of which you have just read the entries, where did the lumber come from ?

[*Same objection as to question 7.*]

A. From New Cumberland.

Q. 15. Whose lumber-yard ?

[*Same objection.*]

A. I don't know whether it was Shoop & Sadler or Musser & Shoop.

Q. 16. Did those two firms succeed each other at the same lumber yard ?

[*Same objection, also as leading.*]

A. Yes, sir.

Q. 17. Who went to get the lumber ?

[*Same objection as to question 7.*]

A. Why, Daniel Weaver and myself.

Q. 18. What kind of lumber did you get—boards or sticks, or what?

[*Same objection.*]

A. We got some what we called stretchers for the bridge; some few scantling and some boards, I think; I am not so positive about that.

Q. 18. Did you use any of the old timber for the bridge?

[*Same objection.*]

A. I think we did; yes, sir.

Q. 20. Had the damage which caused you to rebuild that bridge been caused that season or some years previously?

[*Same objection, also because as leading and because it does not appear that the witness has personal knowledge.*]

A. To the best of my knowledge it was that spring.

Q. 21. What did Daniel Weaver have to do with the business?

[*Same objection as to question 7.*]

A. He was supervisor of Lower Allen township.

Q. 22. Who had immediate charge of the job?

[*Same objection.*]

A. I don't comprehend your meaning, Mr. Storrow—[complainants' counsel says I mean the rebuilding the bridge]—the witness says I had.

Q. 23. Did you work at it yourself?

[*Same objection.*]

A. Yes, sir.

Q. 24. I see that part of the work is charged with the name "John" connected with it; who does that refer to?

[*Same objection.*]

A. John Greenfield.

Q. 25. Did he work on that job with you?

[*Same objection.*]

A. Yes, sir.

Q. 26. Who else worked on that job with you?

[*Same objection.*]

A. Louis Umberger, William Umberger, John Umberger, Isaac Gray, James Shaffer, and McAllister.

Q. 27. A man by the name of Isaac Gray gave a deposition for the

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defendants in sur-rebuttal [record, page 310;] said he was forty-five years old, a farmer, had lived thirty-two years in Cumberland, about half a mile from Zinn's clover-mill, and about a quarter of a mile from Zinn's fulling-mill; is that the Isaac Gray that worked with you?

[*Same objection.*]

A. Yes, sir.

Q. 28. A man by the name of James Shaffer testified for the defendants' [sur-rebuttal record, page 284]; said he was thirty-one years old; of Fairview township; laborer; and at one time worked for Adam Henry Zinn, and helped to put up the bridge at Zinn's clover mill; is that the Shaffer that worked on the job with you?

[*Same objection.*]

A. Yes, sir.

Q. 29. When he worked on that job was he working for himself, or was he a hand furnished by some man whom he was hired to; and if so, by whom?

[*Same objection, and also because it does not appear that the witness has personal knowledge on the subject.*]

A. He was working for another man—Adam Henry Zinn.

Q. 30. What particular work did this Shaffer do on that job?

[*Same objection.*]

A. He hauled the timber into the creek for us.

Q. 31. With whose horses?

[*Same objection.*]

A. Adam Henry Zinn's horse. I can't remember whether he had more than one.

Q. 32. Do you remember any particular incident that happened during that job, in which Shaffer and Isaac Gray were concerned?

[*Same objection.*]

A. No more than hauling the timber.

Q. 33. Do you remember any incident in which Shaffer, Isaac Gray, and John Greenfield were concerned while the job was going on?

[*Same objection.*]

A. Yes, sir.

Q. 34. What was it?

[*Same objection.*]

A. Mr. Gray didn't want to get into the water and sat on the wagon going to the shore for more timber, and John Greenfield got off the wagon and pulled Gray into the water.

Q. 35. It has been alleged that Zinn's clover-mill bridge and Zinn's fulling-mill bridge were carried away by a flood in August, 1873. Do you remember any such occurrence?

[*Same objection.*]

A. No, sir.

Q. 36. Were you summoned by the defendants last winter to go to Harrisburg to testify; did you go there and see the defendants' counsel and show them the same two books which you have referred to in this examination?

[*Same objection, and also because incompetent and leading.*]

A. Yes, sir.

[*Counsel for the complainants offers the two books referred to by the witness to defendants' counsel for inspection, and defendants' counsel takes them.*]

Defendants' counsel renews his objection to the statement made upon the record of a portion of the contents of said book and of entries therein, for the reason that the books themselves are the best and only competent evidence as to their contents; and objects to the consideration of said statements and entries unless said books, which are here present, are offered in evidence by the complainants and left in the custody of the Examiner to be returned by him into court.

Complainants' counsel, not admitting that the objection has the slightest validity, calls attention to the uniform practice throughout this case.

Adjourned to nine o'clock, A. M., April 24, 1884.

APRIL 24, 1884

Examination resumed.

Present, Mr. Storrow for complainants, and Mr. Dixon, Mr. Jacobs, and Mr. Church for respondents.

Examination of David Smith by Mr. Storrow continued:

Q. 37. Will you state whether, before you went to Harrisburg and saw the defendants' counsel and showed them those books, anybody had seen you with reference to this case, or talked with you concerning the bridges, or seen the books or you, except Shank or Shoop, or some one connected with the defendants?

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A. No, sir.

Q. 38. Look at the bill now shown you and state whether or not that is the bill for the lumber got at New Cumberland, and used for rebuilding Zinn's bridge, as you have testified?

[Same objection, and also because leading and suggestive.]

A. Yes, sir.

[The bill produced is put in evidence by complainants' counsel. Same objection.]

"The bill is copied by the examiner as follows:

LUMBER YARD.		New Cumberland, Pa. June 8th, 1875.	
Boards, Plank, Joist,		Mess. Becker & Weaver, Supervisors.	
Fencing, Shingles,		Bought of Shoop & Sadler,	
laths and Pickets.		Wholesale and Retail	
Planing mill.		LUMBER MERCHANTS,	
Flooring, Weather-		and manufacturers of	
boarding, Washboards,		Doors, Sash, Blinds, Shutters, &c.,	
Casing, Beads, Mould-		New Cumberland, Pa.	
ings, Doors, Shutters,		Terms Cash.	Interest Charged on all
Frames, Sash, Blinds,			Bills after 60 days.
Brackets, Cornice,			
Newels, Rails, Ballas-			
ters, Table Feet,			
Bed Posts, Scrowls,	4 pcs. Pine 6×10—14—280		
Drapery, Verandahs	4 " " 6×10—12—240		
&c &c, made to order			
Saw Mill.			520 ft. at 25 . 13.00
House, Barn, Bridge, and	13 Ps. Hem. 3×4—12—156 ft. at 14 . 2.18		
Car Bills, &c., cut to	220 ft Bds. 24 . 5.28		
order.	130 " " Ripped 4 in wide 28 . . . 3.64		
<hr/>		<hr/>	
Herald Ptg. Co., Carlisle.	For foot bridge at Zinn's	\$24.10	
	Recd. Payment		
	Shoop & Sadler,		
	per Kaufman."		

Q. 39. There is a stick of timber known along the river as an oar-stem; do you know the article, and have you used it in the course of your business as carpenter?

[Same objection, and also because too infinite in description.]

A. Yes, sir.

Q. 40. I understand that it is a stick to which a piece of plank is pinned, and used to steer rafts by, and that at the lumber yards where the rafts are broken up oar-stems are sold as cheap lumber; is that the fact about it?

[Same objection, and also because leading.]

A. Yes, sir.

Q. 41. What is the ordinary length of oar-stems?

A. About forty feet.

Q. 42. Is that as long a stick of timber as you expect to get out of an oar-stem?

[*Same objection.*]

A. Yes, sir.

Cross-examination, de bene esse, by Mr. Dixon:

Cross-Q. 43. The books you have here produced have no relation or bearing upon your official acts when you were justice of the peace, but are simply your private books of account about your carpenter work, are they not?

A. Yes, sir; they are my private books.

Cross-Q. 44. Your testimony has related to the period of time since 1870 or 1871, when you moved into Fairview township, York county, and near the Yellowbreeches creek. Has there been any high water or floods in that creek during this period of time?

[*Objected to as immaterial, and as new matter outside of the direct examination.*]

A. Yes, sir.

Cross-Q. 45. What years?

A. I didn't keep any date of the years particularly; that was a minor thing to me, and immaterial.

Cross-Q. 46. Well, give us your best recollection.

[*Same objection.*]

A. In the summer of 1873, in August, the creek was up pretty well.

Cross-Q. 47. I notice in your account-book, on page 33, that there are charges made by you for work done by you at that time, that is, August, 1873, at the Hart's. Do you remember any circumstance connected with that work having any bearing or relation to any high water or flood in the Yellowbreeches creek at that time?

[*Same objection, and attention is called to the fact that the defendants summoned this witness while proving their case, and did not take his deposition.*]

A. Yes, sir.

Cross-Q. 48. Please state it.

[*Same objection.*]

A. Well, we built a kind of a shelter with boards for our tool-chest

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by the side of the run, and during one night—I can't remember the date of the night, though—it rained pretty heavy, and in the morning I told the boys that I supposed our chest was in the water, as the run was very high, and I said I would go down and see about it. Mr. Hart told me to take a horse and go to Lisburn and get some medicine for his wife, as she was quite unwell; I took the horse, rode down to the shelter, found the chest all right, and then went to Lisburn.

Cross-Q. 49. Did you, in going to Lisburn on that occasion, cross the Yellowbreeches creek; and if so, where?

[*Same objection.*]

A. Yes, sir; at Lisburn.

Cross-Q. 50. What was the stage of the water there?

[*Same objection.*]

A. Well, there was water on both sides of the bridge that I had to ride through as I passed over.

Cross-Q. 51. If I understand you right, then, the water was so high that it had overflowed the banks of the creek and covered some of the land beyond each end of the bridge, so that you passed through water before you got to the bridge and again after you left the bridge; is that correct?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 52. Was the water in this flood sluggish or was there quite a current at the bridge when you crossed it?

[*Same objection.*]

A. On the York county side the water was rather sluggish; on the Cumberland side there was quite a current.

Cross-Q. 53. Do you know whether that flood carried away any of the bridges along the line of the Yellowbreeches creek?

A. I cannot remember of any going away.

Cross-Q. 54. Did you go along the Yellowbreeches creek—down below for example, the region of Eberly's Mills, that day?

[*Objected to as above, and because the defendants should not cross-examine Mr. Smith upon a matter on which they have made him their own witness.*]

Counsel for defendants states that this examination is clearly competent as legitimate cross-examination upon matters inquired into upon the direct examination, and counsel for complainants is cited to direct questions 35 and 20.]

A. No, sir.

Cross-Q. 55. Did you go the length of the Yellowbreeches creek any day during that flood?

[*Same objection.*]

A. No, sir.

Cross-Q. 56. Was the water in the Yellowbreeches creek at its height the day you went to Lisburn, or was it higher either before or after that day?

[*Same objection.*]

A. I can't remember about that.

Cross-Q. 57. Do you remember whether, at any time during that period, the water got up to your tool-chest, or nearer to it than on the day you have mentioned?

[*Same objection.*]

A. No, sir; I don't remember. I went home on that day and remained at home several days.

Cross-Q. 58. Till the water went down from its height?

[*Same objection.*]

A. I remained at home until the ground dried off. I can't remember what the stage of the water was when I returned to work.

Cross-Q. 59. You didn't take the chest home with you on the day you have mentioned, did you?

[*Same objection.*]

A. No, sir.

Cross-Q. 60. How did you get it home, and how was it found, with reference to its position near the water, when it was taken and brought home?

[*Same objection.*]

A. Well, it was found just where we had left it. I don't remember how I got it home.

Cross-Q. 61. Do you remember who went for it and brought it home?

[*Same objection.*]

A. It was not taken home. It was taken to Mr. Andrew Hart's residence to finish a job there that we had worked on about the same time.

Cross-Q. 62. Do you remember who went and brought it from the place where it was?

[*Same objection.*]

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A. No, sir; I didn't do it, that I remember.

Cross-Q. 63. How near was the water to the chest when you saw it the day you went to Lisburn?

[*Objected to as above, and as a frivolous waste of time.*]

A. That I cannot remember.

Cross-Q. 64. Do you remember an island at Lisburn, in the creek between the race-bridge and the wagon-bridge? I refer to the island known as Jacob Kunkel's island.

[*Same objection.*]

A. Yes, sir.

Cross-Q. 65. Do you remember what was raised on that island that year?

[*Same objection.*]

A. Not on the whole island, no, sir; there was melons on part—next to the creek.

Cross-Q. 66. Do you remember how the high water affected that part of the island?

[*Same objection.*]

A. Yes, sir; there was some melons lying in the water when I went to Lisburn that morning.

Cross-Q. 67. Do you remember whether you ever heard that flood spoken of by any particular term having any relation to that occurrence?

[*Same objection.*]

A. Not until since this case was up.

Cross-Q. 68. Do you know whom these melons that you saw floated down to Lisburn belonged to?

[*Same objection.*]

A. I didn't see any floating down.

Cross-Q. 69. I refer to the melons that you have stated you saw lying in the water when you went to Lisburn that morning.

[*Same objection.*]

A. To Sipe and Wire, I think.

Cross-Q. 70. How are you able to fix the time as August, 1873, when this occurred?

[*Same objection.*]

A. By my account-books.

Cross-Q. 71. Inasmuch as the complainants have declined to put your books in evidence, will your read to the Examiner the entries to which you now refer?

[Complainants' counsel states that he has neither been requested, nor declined to put the books in evidence.

Defendants' counsel refers to the objection entered upon the record following the answer to question 30; but if complainants' counsel does not regard this as an implied request, or as an opportunity declined, he is now requested to offer said books in evidence, if he desires to have the entries therefrom referred to in the direct examination considered, as the objection is here repeated, that the books themselves are the best and only competent evidence as to their contents.

Complainants' counsel suggests that if defendants' counsel wants the books in the case, and can make arrangements with the witnesses, he shall have an objection.

The above objection is repeated by defendants' counsel.]

A. Yes, sir; we were working for Mrs. Elizabeth Hart. The entry is as follows:

"Mrs. E. Hart in Act. with D. Smith.				Dr.	Cr.
1873					
Aug. 11-16, to 3½	days self at \$1.50	-	-	4.87½	\$ cts.
" 11-16, to 4½	" Pfleager-	-	-	6.87½	
" 11-16, to 3½	" Rudy	-	-	3.25	
" 19-23, to 4½	" Self	-	-	6.75	
" 19-23, to 5	" Pfleager,	-	-	7.50	
" 19-23, to ½	" Rudy	-	-	4.00	
23-30, to 5	- - Self	-	-	7.50"	

Cross-Q. 72. Who is referred to by "Pfleager?"

[Same objection.]

A. Edward Pfleager.

Cross-Q. 73. Was he a carpenter working for you at Mrs. Hart's at that time?

[Same objection.]

A. Yes, sir.

Cross-Q. 74. Where is he now?

[Same objection.]

A. Living about a mile and a half, or probably two miles, above Mechanicsburg, Cumberland county.

Cross-Q. 75. Who is referred to by "Rudy?"

[Same objection.]

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A. John S. Rudy.

Cross-Q. 76. Was he also a carpenter working for you at Mrs. Hart's at that time.

[*Same objection.*]

A. He was working for me, but never learned the trade so as to be able to do much work on his own account.

Cross-Q. 77. Where is he now?

[*Same objection.*]

A. In Fairview township, York county.

Cross-Q. 78. Were there any others working at Mrs. Hart's at the time of that job?

[*Same objection.*]

A. No, sir; not that I can remember.

Cross-Q. 79. What was the job you did for Mrs. Hart at that time?

[*Same objection.*]

A. Built her a stable and a hog-pen.

Cross-Q. 80. Can you point out on the map found in the end of volume 3, (complainants' exhibits) "from Beers' map of Cumberland county, 1872—" where Mrs. Hart lived at the time that work was done, or did she live further up the creek than the map extends?

[*Same objection.*]

A. She lived further up the creek, sir.

Cross-Q. 81. Lisburn, also, was further up the creek than the map extends, was it not?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 82. You have spoken of lumber called "stretchers" that you got for the bridge; describe these "stretchers."

A. They are long pieces of timber. Did I give that definite, as that answer?

Cross-Q. 83. Your language was: "We got some what we call stretchers for the bridge." Please describe those stretchers.

A. What we call stretchers are long pieces of timber that reach from truss to truss.

Cross-Q. 84. How long were these "stretchers?"

A. Well, they generally run about forty feet.

Cross-Q. 85. How long were these you got on that occasion?

A. I can't tell, sir, what the length of them was, but it would be near that length, if we got any.

Cross-Q. 86. That is, they were about the usual length?

A. If we got them; yes, sir.

Cross-Q. 87. You stated yesterday, in answer to questions 14, 15, 16, and 17, about the lumber and where it was got, and in answer to question 18, asking what kind of lumber you got, you stated positively: "We got some what we call stretchers for the bridge." The bill of Shoop & Sadler, which was presented this morning and which I have been having before me, contains no entry for any species of lumber longer than fourteen feet. Does this fact have any influence in leading you to withdraw your positive answer made yesterday?

A. Yes, sir; from the fact that I have at different times been down at the river for that kind of lumber.

Cross-Q. 88. And that kind of lumber was sometimes used by you in bridge work, as pieces that reach from truss to truss?

A. Yes, sir.

Cross-Q. 89. Isaac Gray, to whom you have referred in your direct examination, was a farmer, was he not?

[*Objected to as already answered.*]

A. Yes, sir.

Cross-Q. 90. Did you and your carpenters do the carpenter-work on the rebuilding of Zinn's bridge referred to in question 26, or did Mr. Gray do carpenter-work on that job?

A. He did no carpenter-work on the job, sir.

Cross-Q. 91. What work that was not carpentering did he do?

A. He helped to get the timbers into the creek, and raise the stretchers on the trusses.

Cross-Q. 92. Did you pay him for this work?

A. No, sir.

Cross-Q. 93. He was not in your employ, then?

A. He was under my command, sir.

Cross-Q. 94. Did you employ him and pay him?

A. No; I didn't employ him, and I told you a few minutes ago I didn't pay him.

Cross-Q. 95. You have mentioned John Greenfield as working on that job with you; did you employ him and pay him for that work?

A. I can't remember whether I employed him or whether I paid him.

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Cross-Q. 96. Do you remember whether you made any charge in your account for building that bridge for his services?

A. Yes, sir; I did make a charge for his work.

[Counsel for defendants object to the remark of counsel for complainants, directing witness to look at his account-books, if he wanted to, previous to the making of the above answer by the witness, as an unwarranted interference with the cross-examination. At request of complainants' counsel, Examiner notes that the witness answered the question without reference to his books.]

Cross-Q. 97. Then if you made a charge for his work and received the pay for it, it was because you had employed Mr. Greenfield; and you paid him, did you not, for that work?

A. I suppose so; yes. He never asked me for it since, anyhow, that I know of.

Cross-Q. 98. You have referred to James Shaffer; do you remember whether James Shaffer ever worked for a Mr. Sweeney?

[Objected to as new matter.]

A. Not that I can remember, sir. I can't remember of knowing of him working there.

Cross-Q. 99. On the occasion when you were building that bridge, did you do any other work there, so that you were there, except at the time you were engaged in working at the bridge?

A. No, sir.

Cross-Q. 100. Then have you any personal knowledge as to whom James Shaffer was working for that summer, beyond the fact that he was working on the bridge while you were there working?

A. He was hired with Adam Henry Zinn.

Cross-Q. 101. State the means of your knowledge of that.

A. He hauled the timber into the creek with Zinn's team and wagon, and I saw him cultivate some growing crop near Mr. Zinn's barn, in Mr. Zinn's field.

Cross-Q. 102. Was this when you were working on the bridge that you saw him cultivate?

A. Yes, sir; if I can remember right.

Cross-Q. 103. Did he work at the bridge all the time that you were working on the bridge?

A. No, sir.

Cross-Q. 104. How much of the time did he work on the bridge when you were working at it?

A. That I don't remember.

Cross-Q. 105. On that occasion did he work at the bridge to any considerable extent?

A. I can't remember, sir.

Cross-Q. 106. Can you remember his working more than any part of any single day; and if more than this, can you remember what he did on any several days?

A. I can't remember anything except the day we raised the stretchers on the trusses—hauling those timbers—whether that took a whole day or not I can't remember.

Cross-Q. 107. How did he haul them?

A. With Mr. Zinn's team and wagon.

Recess until 2, P. M.

Cross-Q. 108. You stated on your direct examination that you did other work on one of these two bridges since 1870, but that you couldn't remember what year it was. How is it that you are not able to remember the year when this work was done by you? Is it because of the lapse of time since that was done?

A. No, sir; the fact that I didn't tax my memory with the work, and I may have made a memorandum in a small book that I sometimes carry with me; probably the supervisor paid me right away for the work; I don't know now—can't tell you which it is.

Cross-Q. 109. Can you always remember the exact number of the years when you did different jobs of work eight or ten years ago, except, when they are charged in your book, by the date of the entry?

A. No, sir.

Cross-Q. 110. The entry you read of the charge for "repairing bridge at fulling-mill" is not dated, or, as you have stated, "I have no date to that, either." Was that bridge repaired by you in June, or was it repaired by you on a different occasion from the repair on the clover-mill bridge?

A. That I can't tell you, whether it was about that time or what time it was.

Cross-Q. 111. I notice on page 28 of your account-book with the dark cover, under the heading "J. Rudy in Act with D. Smith," the following:

"1873

Aug. 11-16 to 8 $\frac{1}{4}$ days Mrs. Hart,	2.92 $\frac{1}{2}$
" 19-22 to 4 " " "	3.60
" 25-30 to 6 " " "	5.40"

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Am I correct, and is this the charge for his services when he was at work for you at Mrs. Hart's on the occasion you referred to this morning?

[*Same objection as to cross-question 47.*]

A. Yes, sir.

Cross-Q. 112. I notice that in this book the numbers of the pages are not printed, but are written, some with pencil and some with ink; when was this numbering of the pages done?

A. At the time of the entry, if I did it.

Cross-Q. 113. Please look carefully at those page-numbers, and state whether they are in your handwriting.

A. No, sir; I don't think they are.

Cross-Q. 114. In whose handwriting are they?

A. That I can't tell you, sir.

Cross-Q. 115. Who did the numbering?

A. I don't know, sir.

Cross-Q. 116. At whose suggestion was it done?

A. Not at mine, sir.

Cross-Q. 117. When did you first notice that the leaves of the book had been numbered?

A. That I can't tell.

Cross-Q. 118. Then, if this numbering was not done by you, or at your suggestion, tell us all you know about it.

A. I know nothing—don't remember anything about it—when it was done.

Cross-Q. 119. Is it not a fact that this numbering has been done some years since the entries were written in those books eight or ten years ago, and quite recent to their production by the complainants yesterday?

A. No, sir.

Cross-Q. 120. But you have just stated, have you not, that you can't tell when you first noticed that the leaves had been numbered; and in answer to the request to tell us all about it—that you knew nothing, didn't remember anything about it—when it was done; did you not?

A. One moment, sir. I inferred from the last question answered that—when I answered that question—that the defendants in this case numbered the leaves of that book.

Cross-Q. 121. And so you understood the last question when you answered it "no, sir," did you?

A. Understood it how?

Cross-Q. 122. With the inference you have just mentioned?

A. Yes, sir; with the inference that the defendants numbered the leaves of that book.

Cross-Q. 123. I notice on the first page of the book an index of the names and the number of the page on which the accounts with those names are found; is that page in your handwriting?

A. Yes, sir; it is in my handwriting.

Cross-Q. 124. Can you cite any entry of any name and number on that page that does not correspond with the same name and number of page in the body of the book containing the account belonging to that man?

A. Yes, sir. I see that John Wilt is marked 66, and we find Henry Atticks on page 66 and John Wilt on page 6. John Wilt is also marked 6 in the column, but there has been an entry made there of the number 66—for what purpose I don't know.

Cross-Q. 125. But is not the account with John Wilt on page 6 of the body of the book, and is not the figure 6 written opposite the name of John Wilt in the index, and exactly in the perpendicular column, giving the numbers of the pages belonging to all the names in the index, and are not the figures 66, to which you have referred, merely pencilled in more than two inches from that column?

A. Yes, sir.

Cross-Q. 126. What was your design in making that index, giving the names and numbers of the pages upon which the accounts could be found in the body of the book?

A. To find the page, of course.

Cross-Q. 127. Does not the numbering of the pages stop with the last number upon the leaf preceding the entry referred to by you on your direct examination for "work at Zinn's bridge," and are there not evidences that a leaf has been torn out between that last leaf, having a number upon one of its pages, and the next leaf having upon it and upon its first page the Zinn entry above referred to?

A. Do I comprehend the question right, sir? The leaf has been torn out; the numbering stops at the leaf preceding the entry referred to.

Cross-Q. 128. Please look at page 13 of that book, entitled "J F Zinn in Act with D Smith," and state whether the book does not present evidences of scratching where the initials "J. F." and the name "Zinn" appear, and also whether the book does not present evidences indicating that the entire entry in the first line of the account had been erased, and the present entry written in its place?

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A. Yes, sir.

Cross-Q. 129. The second entry is dated "Aug. 4-10," is it not?

A. Yes, sir.

Cross-Q. 130. And the year-dates "1873" and "—74—," are the only year-dates upon that page, are they not?

A. Yes, sir.

Cross-Q. 131. On page 36 of your account-book with the lighter cover there is the following entry :

" 1871				
	Work at foot bridges	Dr	Cr	36
June				
"	8-9 Fulling mill myself 3 days			
	at \$2.25,			6.75
	8-9 E. Pfeager 2 days at			
	8-9 John Greenfield 2 " at			
Aug	At clover mill myself 2½ days			
	at 2.25,			5.62½"—

is there not?

A. Yes, sir.

Cross-Q. 132. There are evidences of the paper having been scratched or rubbed where the date-figures "8-9" appear in a row before these three entries ; are there not?

A. Yes, sir ; that is a very usual thing.

Cross-Q. 133. The date-figures "1871," "June 8-9," "8-9," "8-9," are written in a different and much brighter ink than the pale ink with which the body of the entries is written, are they not?

A. Yes, sir.

Cross-Q. 134. The "1871" is evidently written with a stiff pen that would not spread like the letters, for example, in the word "foot-bridge," is it not?

A. I don't say "evidently" ; it appears so, but I don't say it is so, sir.

Cross-Q. 135. I will call your attention to the date "1875" in your dark-covered book, in the entry cited by you and copied by the Examiner in answer to direct question 11, and ask you what original figure the present figure "5" in the date "1875" was written over?

A. Not any, sir.

Cross-Q. 136. Please look at the two photographs I now hand you—one taken of the same size, and the other magnified—and state whether they are not the same words and handwriting as shown upon that page?

[*Objected to for the reason that the witness is not an expert in photography or the contrivances of photographers ; and further, that it does not appear*

when, how, by whom, or under what circumstances the photographs produced were taken.]

A. No, sir; they are not, on the magnified copy; the other is, so far as I can see, about the same; yes, sir.

Cross-Q. 137. The magnified copy is the same handwriting but enlarged, is it not?

[Same objection.]

A. Yes, sir.

[Inasmuch as the complainants have declined and neglected to offer in evidence the books produced, and from which entries have been copied in this deposition, and as said books are not in the control of the defendants, counsel for defendants here offers in evidence the above referred to photographic copy of said page containing said entries, and the enlarged photographic copy of a portion of said page containing the entry of the date 1875, and requests the Examiner to mark the same respectively for identification: "Exhibit Photograph of Zinn's Bridge Entry in David Smith's Account-book," and "Exhibit Enlarged Photograph of Zinn's Bridge Entry in David Smith's Account-book," together with the Examiner's name and the date.]

Complainants' counsel says that he has not declined to put in the books, and objects to the alleged photographs because they are not authenticated.]

Re-direct by Mr. Storrow:

Q. Q. 138. Will you state whether these two books referred to in your deposition, including the entries about the bridges, are honest books, honestly kept?

[Objected to as clearly leading.]

A. Yes, sir.

Q. Q. 139. You have testified that you carried these books to Harrisburg last winter and showed them to defendants' counsel upon being summoned; have they ever been out of your possession since then until they were produced yesterday?

[Objected to as not re-direct, the custody of the books not having been inquired into on the cross-examination.]

A. No, sir.

Q. Q. 140. The last numbered page in the dark-covered book is numbered 88, being the first page on the leaf. The page on the other side of the leaf, which would have been 89, is not numbered. Is that the fact or not?

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A. There is no number there. The last numbered page is 88, and there is no number on the next page. The number 88 is on the first side of the leaf.

Q. Q. 141. And the entry headed: "Work at Zinn's bridge," is on the page which would be numbered 90 if the pages now in the book were numbered in regular order, would it not?

A. Yes, sir.

Q. Q. 142. In the 128th to 130th cross-questions inclusive, you were asked about the entry on the first line of page 13 of your dark-covered book, and about another entry of a date lower down on the same page. Will you now read to the Examiner, to be taken down as part of your answer, all the entries on that page, from the top down through and including the one referred to in the 130th cross-question?

[*Objected to unless the books themselves are offered in evidence, they being the best evidence as to their contents.*]

A. The entries are as follows:

		Dr.	Dr.
		\$ cts.	\$ cts.
July	25-26 to 2 days at 137½	2.75	
Aug.	4-10 to 5½ days at 137½	7.56½	
"	13-16 " 3	4.12½	
"	20×21 " 1½	2.06½	
Sept.	2×7 " 5½	7.56½	
Aug.	to 5 days by Kimmel		
	2×7 5½ Kimmel	6.87½	
	9×10 2 "	7.56½	
		41.25	
March 25 1873 By cash			41.25"

Q. Q. 143. Do you remember what that work was for Mr. J. F. Zinn which is charged in the entry, dated August 4-10, on that page? I mean where the work was done—upon what property.

A. It was at the fulling-mill property, and, I presume, it was at the fulling-mill.

Q. Q. 144. The name of Kimmel was connected with some of the work charged in the entries copied into your 142d answer; what was his first name?

[*Objected to because the word Kimmel refers to different entries from the entry "Aug 4-10" above referred to.*]

A. Jacob.

Q. Q. 145. Did Mr. J. Fred Zinn own the fulling-mill at that time?

[*Objected to as not proper re-direct examination.*]

A. He employed me to do the work, and, I think, owned the mill.

Recross by Mr. Church, de bene esse :

Re-Cross-Q. 146. Then, as I understand you, you worked at the fulling-mill in 1873?

[*Objected to as a distinct misstatement of the witness' testimony, and of the dates of the entries referred to.*]

The above statement of counsel for complainants objected to as an obvious attempt to instruct the witness, since the witness has stated that the only year-dates on the page to which his attention was directed are 1873 and 1874.

Complainants' counsel replies that it appears by the entries which the witness has read into his 142d answer, but which respondents did not read into their 130th question, that the entry of August is at the top of the page, and that the entry of the year 1873 is an entry of the date of March 25, 1873, and is the entry of the payment of the preceding work, and which, therefore, could not have been done in August, 1873.

Counsel for defendants in reply protests against complainants' counsel's argument, made with a view to the instruction of the witness.]

A. No, sir; I did not say so. The book don't say so, and I did not understand the last question if I said so. I don't know the year; there is no date in the book what year the work was done, but I received my pay for the work on the 25th day of March, 1873, according to the date of the book.

Re-Cross-Q. 147. The entry in the book opposite the date given as in 1873, is, simply, "By cash, \$41.25," is it not?

A. "March 25, 1873, by cash, \$41.25."

Re-Cross-Q. 148. As you cannot, unaided, remember the year that you did the work on the fulling-mill, please look again at the entry made on what would be page 90 of your dark-covered book, and set out on the record as your answer to the 11th direct question, and tell us whether or not you see a figure "8" written beneath the figure "5," in the year-date of that entry, and in paler ink than the "5," and in ink corresponding to the color of the ink in which the other un-

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altered figures of the said year-date all written. Examine closely before you answer, if you please.

A. There is a blur there is all I can see; them you will find, maybe, in a good many others.

[Complainants' counsel leave the books in the custody of the Examiner for the present, and will have him produce them at the hearing if they can conveniently arrange for that purpose.]

Counsel for defendants gives notice that he will at the hearing object to the consideration of the entries cited or copied from said books on the direct examination, unless complainants now offer said books in evidence and leave them permanently in the custody of the Examiner, to be returned by him to the court.]

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
24th day of April, 1884.

FRED. M. OTT,
Examiner.

DAVID SMITH.

[Complainants' counsel states that he finds that he forgot to formally offer the "Heisley Reaming Bit" in evidence and he now does so.]

Complainants offer in evidence a certificate from the patent office as follows:

"(2-175)
DEPARTMENT OF THE INTERIOR,
United States Patent Office.
9014

\$1.05

To all Persons to whom these Presents shall come,
GREETING:

This is to Certify that a careful search of the records of this office has been made, and the annexed is a correct statement of all the Patents issued to Daniel Drawbaugh between January 1, 1845, and January 1, 1881, and during said period no other patents were issued to him or to any one as his assignee. In testimony whereof I, R. G. Dyrenforth, Actg. Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 23d day of April, in the year of our Lord One thousand eight hundred and eighty-four and of the Independence of the United States the One hundred and eighth.

(Seal of Patent Office)

R. G. Dyrenforth,
Actg. Commissioner.

No. 8,505, Nov. 11, 1851, For improvement in Stave Jointing Machines.
No. 12,900, May 22, 1855, For Stave Machine.

No. 38,296, April 28, 1863, for improvement in Mill Stones.

No. 38,472, May 12, 1863, For improved Machine for levelling the Faces of Mill Stones.

No. 51,435, Dec. 12, 1865, For improvement in Nail Plate Feeders.

No. 59,792, Nov. 20, 1866, For Improvement in Faucets.

No. 59,793, Nov. 20, 1866, For improvement in Faucets.

No. 71,148, Nov. 19, 1867, For Improvement in Nail Plate Feeding Device.

No. 211,322, Jan. 14, 1879, For Improvement in Earth Batteries for Electric Clocks.

No. 225,577, March 16, 1880, for Improvement in Water Motors.

No. 229,592, July 6, 1880, For Improvement in Rotary Measuring Faucets."

It is endorsed as follows: "9014 D'Ex."

Objected to as incompetent, because not the best evidence, it neither embracing the original patents nor certified copies of said patents, and also because the certificate of the Commissioner of Patents is not legal evidence of the results of a search made by him; and also because the same is not competent as evidence in rebuttal or rejoinder.

Complainants' counsel refer to the patent-office certificate produced by defendants in defendants' sur-rebutting record, page 775.]

Adjourned until April 25, 1884, at 10, A. M.

APRIL 25, 1884, 10, A. M.

Examination resumed, pursuant to adjournment.

Present, same counsel, with the addition of Mr. Howson for complainants.

DANIEL WEAVER, being produced, sworn, and examined, saith:

Examined by Mr. Storrow:

Q. 1. State your age, residence, and occupation.

A. I am sixty-five years of age; I reside in Hampden township, Cumberland county, Pa.; I am a farmer.

Q. 2. Were you ever supervisor of Lower Allen township; and if so, in what year were you first supervisor?

A. I was supervisor in 1875.

Q. 3. Had you ever been supervisor of Lower Allen township before that time?

[Objected to because the records of the township are the best evidence upon that subject.]

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A. No, sir.

Q. 4. When were you next supervisor of Lower Allen township?

[*Same objection.*]

A. In 1878.

Q. 5. I understand that there are two supervisors, and that each one pays particular attention to the work in his part of the township. Did you belong to the upper end or the lower end, when you were supervisor in 1875?

[*The first part of the above question objected to as incompetent, and also as instructing the witness.*]

A. The upper end.

Q. 5. Who was the supervisor at the lower end that year?

[*Objected to because the records of the township are the best and only competent evidence upon the subject, especially upon the question as to whether or not another person was supervisor.*]

A. Jacob Eshelman.

Q. 6. Is it a part of the business of the supervisor to keep in repair the foot-bridge across the Yellowbreeches in your township?

[*Objected to as incompetent, and not calling for the best evidence upon the subject; also as leading.*]

A. Yes, sir.

Q. 7. Do you know the foot-bridge across the Yellowbreeches at Zinn's fulling-mill, and the foot-bridge across the Yellowbreeches at Zinn's clover-mill, commonly known as Zinn's bridge?

[*This, and all other questions relating to the floods and bridges upon the Yellowbreeches creek and the circumstances thereof, objected to as improper and incompetent evidence in rejoinder, the subject having been embraced and the ground covered in the evidence taken by the complainants in their reply; and the protest entered with the like objection to question 21 in the deposition of William Ross is here repeated. Complainants' reply that the defendants introduced a large amount of evidence cumulative in its character, on these topics, in their so-called sur-rebuttal; and the testimony of this witness is, moreover, directed to specific statements introduced by the defendants in their so-called sur-rebuttal.*]

A. Yes, sir.

Q. 8. Were they in the "upper end" of the township, and under your especial care while you were supervisor?

[*Objected to, also, because leading.*]

A. Yes, sir.

Q. 9. Did you rebuild either of those bridges, or have either of them rebuilt while you were supervisor in 1875; and if so, which?

[*Last objection repeated.*]

A. Yes, sir; the clover-mill

Q. 10. Who was supervisor at the York county end of the bridge at that time?

[*Same objection as to questions 5 and 7.*]

A. Adam Baker.

Q. 11. State whether or not you dealt with him as supervisor in rebuilding that bridge in 1875?

[*Same objection as to question 7, and also because leading.*]

A. Yes, sir.

Q. 12. If you have your supervisor's book with any account in it relating to the rebuilding of that bridge in 1875, will you please produce it, and read all the entries in it relating to that work, to be taken down as part of your answer?

[*Same objection as to question 7, and also because the book itself, offered in evidence, is the best and only competent evidence as to its contents.*]

A. Yes.

[*Witness produces book and continues:*

"Zinn's Bridge,	
June the 8, 1875.	
One day and	\$
hauling lumber =	4.50
June 9 myself	1.50
June the 9	
John Umberger	\$
three hands	3.75
June 9 1875.	
Adam Henry Zinn	
One hand and	\$
hauling lumber	4.25
Isaac Gray	
June 9, 1875	\$
One day =	1.25
McCallaster	\$
One day	1.25

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nails and spikes .75

John Comfort	\$
hauling lumber	2.00
Manuel Cauffman	
making irons	1.44
lumber Bill	24.10
Carbender work	9.75
Adam Becker	1.50

Adam Becker		
4.33	9.33	13.66
		9.33
		<hr/> 4.33 "

Witness says it may be "cents," or it may be "cash," because the man didn't have any tax to pay.

Examiner states that there is an illegible word written above the "75" charge for nails and spikes, and that the scattered figures below the last item are almost illegible.]

Q. 13. In whose handwriting are the entries which you have just read?

A. My own, all but the last four lines, commencing with "lumber" and ending with "Becker," which are in Adam Becker's handwriting.

Q. 14. How was it that Adam Becker wrote in your book?

[Same objection as to question 7.]

A. He came to my place to settle.

Q. 15. Did you get some new lumber for that rebuilding; and if so, where did it come from, and who went for it?

[Same objection.]

A. We got some new lumber from Shoop and Sadler, New Cumberland. Adam Becker and David Smith went and made out the bill.

Q. 16. Were you there with them when they were getting the lumber?

[Same objection, also because clearly leading.]

A. Yes, sir.

Q. 17. Who hauled the lumber from Shoop and Sadler's to the bridge?

[Same objection as to question 7.]

A. I hauled it myself.

Q. 18. How big a team did you take to haul it with?

[*Same objection.*]

A. Four horses.

Q. 19. Who was the boss carpenter in rebuilding that bridge?

[*Same objection.*]

A. David Smith.

Q. 20. Was there any other carpenter at work with him; if so, who?

[*Same objection.*]

A. Yes, sir; John Greenfield.

Q. 21. Were there any other men at work with them on that job; and if so, name some of them?

[*Same objection.*]

A. There were men helped to raise the bridge—John Umberger and two sons.

Q. 22. Who else?

[*Same objection.*]

A. Isaac Gray, Adam Henry Zinn—one hand—and McAllister.

Q. 23. Who was the hand that Adam Henry Zinn furnished, and what did he do?

[*Same objection.*]

A. Jim Shaffer; he hauled the lumber in the creek.

Q. 24. Who went to Adam Henry Zinn to get him to furnish a hand for the job?

[*Same objection.*]

A. I did.

Q. 25. Do you know whether Shaffer was working for him at that time?

[*Same objection.*]

A. Yes, sir.

Q. 26. How do you know it?

[*Same objection.*]

A. I seen him.

Q. 27. Whose horse did he have on that job?

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[*Same objection.*]

A. Adam Henry Zinn's.

Q. 28. Did you ever rebuild any other foot-bridge across the Yellow-breeches?

[*Same objection.*]

A. No, sir.

Q. 29. Did you ever employ David Smith on any other bridge-work?

[*Same objection.*]

A. No, sir.

Q. 31. The entries which you have read from your book are dated in June, 1875; was that the time when this work was done, or not?

[*Same objection, and also because leading.*]

A. Yes, sir.

Q. 32. Is this the book and the account upon which you settled with the township for rebuilding that bridge, or not?

[*Last objection repeated.*]

A. That is the book; that is, as far as the bridge is concerned.

Q. 33. Were these entries in this book, which are in your handwriting, written there by you at the time the work was done?

[*Same objection, and also because clearly leading.*]

A. Yes, sir.

Q. 34. How long before this rebuilding was the bridge carried away, and in what season of the year was it carried away?

[*Same objection as to question 7, and also because it does not appear that the witness has personal knowledge on the subject, or other than hearsay information.*]

A. It was carried away in the spring of—well, I am not certain whether it was carried away in 1874 or the spring of 1875; it went when the ice went.

Q. 35. Was it carried away during the winter season before you rebuilt it, or not?

[*Same objection as to question 7, and also because closely leading in view of the last answer of the witness.*]

A. It was carried away in the winter season before.

Q. 36. Did the defendants last fall summon you to come to Harrisburg and testify in this case?

[*Objected to as immaterial and incompetent.*

A. Yes, sir.

Q. 37. Did you go there and see the defendants' counsel and show him the book which you have produced to-day?

[*Same objection.*]

A. Yes, sir.

[*The book read from by the witness is offered for the inspection of defendants' counsel.*]

Cross-examination, de bene esse, by Mr. Church:

Cross-Q. 38. What time in 1875 were you elected supervisor of Lower Allen township?

A. In the spring of the year—the time of the election.

Cross-Q. 39. What month?

A. I can't tell you whether it was February or March; I haven't got my certificate with me.

Cross-Q. 40. When did you assume the duties of your office?

A. On the first of April.

Cross-Q. 41. You have been asked when it was that the bridge at Zinn's, which you say was repaired under your directions, was carried away; now, I will ask you if you remember when it was, if at any time, your son moved on to the Shelly farm?

A. My son moved on the Shelly farm in 1873.

Cross-Q. 42. What time of the year?

A. In the spring of the year—April.

Cross-Q. 43. How are you able to say that it was in 1873?

A. I rented the farm for him in 1872, in the fall.

Cross-Q. 44. Is there any other circumstance by which you are enabled to say it was in 1873 when he first went there?

A. Yes, sir.

Cross-Q. 45. State what it is.

A. I had lived down there three years before—that is, adjoining, and I went there in 1870.

Cross-Q. 46. Do you remember anything that happened on your son's farm in that year, 1873, which would enable you to tell that he moved there that year?

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[Objected to as not cross-examination, the witness having already stated that he remembers when his son moved on to the farm in question, and given sufficient reason therefor.]

Question withdrawn.]

Cross-Q. 47. You stated in your direct examination that there was high water in the Yellowbreeches creek in 1874, or the spring of 1875; I refer to your answers to questions 33 and 34, your exact language being: "I am not certain whether it was carried away in 1874 or in the spring of 1875; it went when the ice went;" was there nothing that happened in 1873 that may have been the cause of the bridge being carried away?

[Objected to as not cross-examination, as hypothetical and argumentative and because, as the witness' testimony shows, he did not expressly and affirmatively state that there was high water either in 1874 or in the spring of 1875, but did state that the bridge went when the ice went.]

A. There may have been, but not that I know of; I know of nothing.

Cross-Q. 48. Let me refresh your memory; do you remember a flood which occurred at the Yellowbreeches creek in the summer of 1873?

[Objected to as not cross-examination.]

A. Yes, sir.

Cross-Q. 49. By what circumstances are you able to say that it was that year that a flood occurred?

[Objection continued.]

A. By the circumstance of its being the first year of my son's living down there on the Shelly farm.

Cross-Q. 50. How is that flood associated in your mind with your son's living down there on that farm?

[Objection continued, and further objected to because it is not competent for these defendants to at once use this witness as a witness for themselves, and at the same time cross-examine him with reference to the very proposition which they seek to establish by him.]

Counsel for defendants replies that these questions are strictly in the line of cross-examination, as indicated in cross-question 47 and answer to direct question 34.]

A. It washed his fences out.

Recess until 2, P. M.

[Complainants' counsel, in order to prevent their time being wasted by useless and incompetent cross-examination, formally admit that there was a flood on the Yellowbreeches creek in August, 1873, and that that flood carried away some of Sipe and Wire's watermelons.]

Cross-Q. 51. Do you remember any other damage that was done by that flood?

A. No, sir.

Cross-Q. 52. Do you remember being at David Miller's flour-mill during that flood?

A. I don't remember—not at that—I remember of being at David Miller's flour-mill at the time of a flood, but I don't remember whether it was that flood or not; I think it was in 1871, but I won't be qualified whether it was in 1871 or 1873; I don't remember.

Cross-Q. 53. What circumstance enables you to say that you were there at Miller's mill during the time of a flood?

[Objected to as not cross-examination.]

A. A neighbor came there and asked me to go along to see the creek.

Cross-Q. 54. What further?

[Same objection.]

A. Well, we went to the mill and the water raised rapidly; we had run the chop in the lower story at that time—and it was Sunday morning—and he put the chop on work-benches; the empty barrels we put on the second floor.

Cross-Q. 55. Was this in hot, or cold weather that you were there at Miller's mill?

[Same objection.]

A. Hot weather.

Cross-Q. 56. Were both the bridges at Zinn's—that is, the clover-mill bridge and the fulling-mill bridge—within your supervising district in 1875?

A. Yes, sir.

Cross-Q. 57. I understood you to say, in your direct examination, that the entries in your book in regard to the work on the Zinn bridge were in your own handwriting.

A. Yes, sir.

Cross-Q. 58. Did you enter in this book all the repairs that were made on bridges during your term of office in 1875?

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A. Yes, sir.

Cross-Q. 59. At the time the clover-mill bridge was carried away, as you have stated, was not the fulling-mill bridge also damaged?

A. I don't know.

Cross-Q. 60. If it had been you would have known it, would you not?

A. Yes, sir.

Cross-Q. 61. And you would have had an account of it in your book, would you not?

A. Yes, sir.

Cross-Q. 62. Is it your recollection, independently of anything you may find in your book, that the fulling-mill bridge was not damaged at the time the clover-mill bridge was?

A. I have no recollection of the fulling-mill bridge being damaged.

Cross-Q. 63. If, in 1875, any of the foot-bridges over which you had supervision were carried away during that year, would not that fact be evidenced by some account in your book here?

[Objected to as argumentative, asking for matter of opinion and not fact, and as not cross-examination; and furthermore, that the book in question refers, so far as it refers at all, to items and times of repairs, and not to items and times of damage.]

A. Yes, sir.

Cross-Q. 64. And if any bridge had been carried away during that period, the replacing of it would have been a joint matter between the supervisors of Fairview township, York county, and Lower Allen township, Cumberland county; would it not?

[Same objection.]

A. Yes, sir.

Cross-Q. 65. And you would have had an entry of the fact of any such repairs in your book here, would you not?

[Same objection.]

A. Yes, sir.

Cross-Q. 66. Was David Smith and the other workmen paid in part by the township in which you were supervisor for the work done on the replacement of the clover-mill bridge, referred to by you in your direct examination?

[Objected to as not cross-examination.]

A. I hardly know how to answer that. They were employed by the York county supervisor—Smith and Greenfield.

Cross-Q. 67. The expense, however, was divided between the two townships, was it not?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 68. Please examine your book and point out to me an account of that settlement in regard to the replacing of the clover-mill bridge, if you find it there.

[*Objected to because the witness hasn't testified to anything about a settlement, and that is no foundation for the question in the preceding testimony of the witness.*]

A. In regard to the settlement—I hardly know what to answer you ; that is, do you want to know my account and Mr. Becker's account ? I thought you had that all down.

Cross-Q. 69. Was a settlement made between the two townships in regard to the work done in replacing the Zinn bridge, to which you have referred in your testimony ?

A. Yes, sir.

Cross-Q. 70. While you were the supervisor ?

A. In my time, while I was supervisor, there was a settlement made.

Cross-Q. 71. Is there an account of that settlement in that book ? If so, please point it out.

A. Yes, sir ; well, it is rubbed out ; I can't make it any better than it is ; in that corner there was a settlement made, but I can't make out what it is [indicating in the book the figures referred to in Ans. 12.]

Cross-Q. 72. This book in which your account was kept is an ordinary pocket pass-book, is it not ?

A. Yes, sir.

Cross-Q. 73. And the entries in it are made in pencil, are they not ?

A. Yes, sir.

Cross-Q. 74. Who kept this book ?

A. I kept it myself. I carried it in my pocket on the roads.

Cross-Q. 75. Were all the entries made by you except the entries referred to by you as having been made by Adam Becker ?

A. No, sir ; there has been some other writing done in there.

Cross-Q. 76. Is the writing on the page marked by the Examiner in red ink as page 15 in your handwriting ?

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A. I couldn't be able to tell that.

Cross-Q. 77. Is the writing on the page marked 24 in your handwriting?

A. I wouldn't be able to tell, but I don't think it is. I couldn't decide—couldn't tell.

Cross-Q. 78. Have you any definite recollection, independently of your book, of the repairs that were made on bridges in 1875, while you were supervisor?

A. No, sir.

Cross-Q. 79. If you are not able, as you have said, to tell whether or not the handwriting in your book is your own, you do not know whether or not the entries have been changed, or altered, or put there since the time you were supervisor, in 1875; is this not the fact?

[*Objected to for the reason that the question misstates and perverts the witness' testimony.*]

A. Well, I don't think they were, though.

Re-direct by Mr. Storrow:

Q. Q. 80. State whether or not you distinctly remember that during the first year you were supervisor, in 1875, you had Zinn's bridge rebuilt, in connection with Adam Becker, and with David Smith as boss carpenter?

[*Objected to as leading, not proper re-direct examination, and improper in any view, the witness having distinctly stated that he had no recollection about the matter.*]

Objected to as a misstatement of the witness' testimony, in that the witness did not say what is put into the objection, in form or substance, and in that the 78th question inquires substantially whether the witness has a definite recollection of the repairs on all bridges, including those over little runs and drains.

In reply, counsel for defendants says that the "bridges over little runs and drains," referred to by counsel for complainants, are purely figments of his imagination, and have not been testified to by the witness, nor does his book show that any such existed or were repaired.]

A. Yes, sir.

Q. Q. 81. Will you state whether or not, in the part of Lower Allen township which came under your supervision in 1875, there were little bridges and culverts in the roads where they crossed the runs and drains?

[*Objected to as leading and not proper re-direct examination*]

A. Yes, sir.

[*The book referred to is left for the present with the Examiner.*]

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
25th day of April, 1884.

FRED. M. OTT,
Examiner.

DANIEL WEAVER.

HENRY M. BITNER, *being produced, sworn, and examined, saith:*

Examined by Mr. Storrow:

My age is sixty-one; I reside in Lower Allen township, Cumberland county; I am a farmer.

Q. 1. Do you hold any office in the township at this time; and if so, what?

A. School-director.

Q. 2. Were you ever a supervisor in that township; and if so, in what year?

[*Objected to as calling for secondary evidence, the records of the township being the primary evidence of the fact in question.*]

A. In 1873.

Q. 3. Was it part of your business as supervisor during that year to have knowledge of foot-bridges over the Yellowbreeches carried away in your part of the township, and to repair them?

[*This and all other questions relating to the floods and bridges upon the Yellowbreeches creek and the circumstances thereof objected to as improper and incompetent evidence in rejoinder, the subject having been embraced and the ground covered in the evidence taken by the complainants in reply, and the protest entered with the like objection to question 21 in the deposition of William Ross is here repeated.*]

Complainants' counsel replies that the defendants introduced a large amount of evidence cumulative in its character on these topics in their so-called sur-rebuttal, and the testimony of this witness is, moreover, directed to specific statements introduced by defendants in their so-called sur-rebuttal.]

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A. Yes, sir.

Q. 4. Were you at the upper end, or what was called the lower end of the township?

[*Same objection.*]

A. At the upper end.

Q. 5. State whether or not any foot-bridges over the Yellowbreeches at the upper end of the township, were carried away during the year 1873, when you were supervisor?

[*Same objection, and also because it does not appear that the witness has personal knowledge of the matter inquired into, or other than hearsay information.*]

A. They were not.

Q. 6. State whether or not you ever employed David Smith to rebuild any bridges over the Yellowbreeches?

A. I did not.

Cross-examined, de bene esse, by Mr. Church:

Cross-Q. 7. When will you be sixty-two years old?

A. I was sixty-one yesterday—the 24th of April.

Cross-Q. 8. What part of 1873 were you supervisor of Lower Allen township?

A. During the summer. Our election, if I recollect right, is in February, and we are elected, and—I don't quite know—but about March or April the old supervisor has made his settlement, and we come in then, and serve on during that whole summer, and until next election and until settlement is made.

Cross-Q. 9. Then you don't recollect whether it was February, March, or April that you took charge of the office?

A. Well, no; I—we don't start in at working on roads until about March, and I don't just precisely know the time.

Cross-Q. 10. What was the first official act that you did after having entered upon the duties of your office?

A. That is, the first work, you mean? I hardly quite know what part of the road-making I done—filling mud-holes or repairing some bridge across some little stream. It is one of them things that I could hardly be positive about.

Cross-Q. 11. What little stream did you bridge? Give the names of them.

A. Oh, well, we call them runs. I don't know that they have any particular names.

Cross-Q. 12. You don't, then, remember just what bridge work you did that season, do you?

A. I mean road bridges, you know, such as I said before.

[*Question repeated.*]

A. Do you mean what amount of bridge work?

Cross-Q. 13. Yes; what amount and what particular bridge work you did eleven years ago.

A. I repaired a great many, but may be not quite all of them, but a great many of the road bridges.

Cross-Q. 14. You don't know how many, do you?

A. No, sir.

Cross-Q. 15. Nor just where they were located?

A. Well, one at Lisburn.

Cross-Q. 16. What do they call that bridge?

A. Well, we commonly call it the head-race bridge. You know it is across the race that runs the water to the mill.

Cross-Q. 17. What is the other name for it?

A. I hardly know any other name but that one.

Cross-Q. 18. What other name have you ever heard it called?

[*Objected to as assuming that the witness ever heard it called by any other name.*]

A. The head-race bridge or a wagon bridge; you may call it each.

Cross-Q. 19. What other bridge was repaired?

A. One across a run between Miller's and Seitz's, on the same road.

Cross-Q. 20. What was that called?

A. I know no other name than a road or wagon-bridge; it was to drive across with a wagon on the road.

Cross-Q. 21. What was the name of the run over which it was?

A. I hardly know whether it had a particular name; I think they called it Seitz's run, or something like that. It was nearest to Seitz's.

Cross-Q. 22. What was the name of any other bridge that you repaired that year—1873?

A. Well, there were several others—one near Shank's.

Q. 23. Over what stream was that?

A. I have no name for that stream.

Cross-Q. 24. Any others?

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A. Yes, there was a few other streams; I hardly have names for them, though.

Cross-Q. 25. Can you locate any other bridges that you built or repaired? I refer in all these questions to the year 1873.

A. I repaired nearly all in the end of the township where I worked. I hardly know just where they are just at this time now.

Cross-Q. 28 There were others, then, that you don't now recollect?

A. Yes—others than Shank's, do you mean? Yes, there were others than those I mentioned.

Cross-Q. 27. Your recollection at this late day is not such as would enable you to remember all the work that you did on bridges as supervisor in that particular year; is that not the fact?

A. Yes—road or wagon-bridges over very small streams.

Cross-Q. 28. What was done to the bridge at Seitz's?

A. Well, there were some new sills put in and then the plank replaced again.

Cross-Q. 29. Who did that work?

A. Well, I had several hands there; I don't just recollect all of them.

Cross-Q. 30. What work was done at the bridge at Lisburn?

A. Some plank replaced, or something like that; I don't just quite know the amount of labor.

Cross-Q. 31. How many men were engaged on that job?

A. I don't know.

Cross-Q. 32. Do you know the names of the men that were engaged on that job?

A. I don't.

Cross-Q. 33. What was the matter with the bridge at Shank's?

A. Well, I hardly know; at nearly all the bridges I put some new planks or new sills; I don't know whether I did at that one or not, but I did some repairs.

Cross-Q. 34. How many men were engaged there and what were their names?

A. I don't know the number of men nor I don't know their names, that I employed at that one.

Cross-Q. 35. Then your recollection of the various places at which you did repairing, and the number of men, and the names of the men who were engaged in such repairing at that time, eleven years ago, is not very good; is it?

A. I have a list of all the men that worked for me, but not the particular work that every one did.

[*Question repeated.*]

A. I know pretty nearly all the men in the township, but just what particular work each one—nearly every man in the township worked that had a tax to pay—in my end of the township.

[*Question repeated.*]

Repetition objected to as a mere waste of time.]

A. I didn't try to remember the names; I have the names on my book of all, or about all, who paid taxes and worked.

Cross-Q. 36. Your memory is not very good as to names and details aside from what may appear in the books, is it?

[*Same objection.*]

A. I didn't try to keep this in memory, you know; I was ruled by the book. As I was keeping a book, I didn't count on my head keeping it after I had it placed fully.

Cross-Q. 37. About how many bridges in all were under your supervision in 1873? State as nearly as you can.

A. Well, about ten or twelve, or perhaps fifteen small bridges in all.

Cross-Q. 38. Might there be as many as twenty, do you think?

A. Well, I think not quite twenty, but it might run over the fifteen, maybe;—without going over the roads.

[*Question repeated.*]

Cross-Q. 39. Please tell the Examiner the names of all the bridges you can remember that were under your supervision, and state to him, also, the name of the stream or run over which each one was placed.

[*Objected to as a mere waste of time.*]

A. I haven't names for many of the streams. I can tell where they are located—a number of them. The wagon or road bridge across the head-race at the Lisburn mill; that is, at that end of the township; a small bridge near Barber's—a small run bridge of a couple of plank that I didn't happen to think of at first. At or near the forge there is two or three small bridges, and then there is what I call Seitz's bridge, and near Mateer's school-house there is a small one. At or near Strong's is another small bridge, and there is one at Shank's, and one at what is called Shelly's lane; one near Umberger's and Gray's, and one wagon bridge at Zinn's woolen factory, across the head-race. There may have

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been some more small ones, but I couldn't tell whereabouts particularly without going over the roads. That is about all I could think of now. There might be a couple of planks to drain a mud-hole or something that I don't just recollect of.

Cross-Q. 40. You say you can't remember at this time any other bridges than those you have named; am I correct?

A. Yes.

Cross-Q. 41. Nor the names of the individuals who worked in repairing these bridges, or any of them?

[*Same objection.*]

A. Oh, I know the names of some few who worked at the different bridges; just what precise bridge I don't pretend to say.

Cross-Q. 42. These that you have named are all wagon-bridges, are they not?

[*Same objection.*]

A. Yes, sir; wagon-bridges across the streams on the road.

Cross-Q. 43. Then the wagon-bridges were all that you had supervision over at that time, were they not?

A. You mean on the roads; there were foot-bridges across the creek—too—that were kept up by the township.

Cross-Q. 44. The bridges that you mentioned as under your supervision in 1873, were all wagon-bridges, were they not?

A. Well, on the public roads; they were foot-bridges across the creek that were on the townships to keep up; that is, Fairview, in York county, and Lower Allen?

Cross-Q. 45. When I asked you to give a list of all the bridges that were under your supervision in 1873, you gave a list of all those whose names you could recollect, and all those included in that list were wagon-bridges, were they not?

[*Objected to for the reason that the witness' attention through the latter part of the examination has been carefully directed to road-bridges alone, and the statement contained in the question is therefore an incorrect statement of the witness' testimony.*]

A. Yes, on the road and on the—yes, what are called road or wagon-bridges.

Cross-Q. 46. Did you have any personal supervision of foot-bridges, or was your attention directed to the road-bridges, in 1873?

[*Question objected to as ambiguous and misleading.*]

A. Well, it was directed to the road-bridges, but, of course to the foot-bridges, too.

Cross-Q. 47. What foot-bridges did you build or repair that year?

A. I didn't repair any or build any, but they were under my care or partly so—the two townships had to build them.

Adjourned until April 26th, 1884, at 2, P. M.

April 26, 1884, 10, A. M.

Examination resumed.

Pre-sent, Mr. Smith and Mr. Howson for complainants, and Mr. Dixon, Mr. Jacobs and Mr. Church for respondents.

Cross-examination of Henry M. Bitner by Mr. Church continued:

Cross-Q. 48. Please state whereabouts you lived in Lower Allen township in the year 1873?

A. On Slate Hill.

Cross-Q. 49. What property did you own in that township at that time?

A. The same property that I live on now and own.

Cross-Q. 50. Did you live there then—in 1873?

A. Yes, sir; I moved there in March, 1871, and have lived there all the while since.

Cross-Q. 51. You owned two farms in 1873, did you not, sir, in Lower Allen township?

A. No, sir; I owned two, but one was in York county.

Cross-Q. 52. Whereabouts in York county was the other one?

A. In Fairview township.

Cross-Q. 53. You were on these two farms a good many times during that time, were you not?

A. Yes, sir.

Cross-Q. 54. And they occupied considerable of your time and your attention, did they not?

A. Yes, sir.

Cross-Q. 55. Did you supervise all the work that was done on roads and bridges, that was done in your district, or did you some times have others look after it?

A. I did sometimes—perhaps two or three times at Lisburn that I did have men to fix those wagon-bridges on the wagon-road across small streams.

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Cross-Q. 56. Do you remember how many times there were in which you relied upon others to do this work?

A. No, sir; I couldn't just name the number of times—some two or three times, as near as I know.

Cross-Q. 57. When you put others in charge of the supervising work you were not personally present when the work was done, were you?

A. No, sir.

Cross-Q. 58. So you can't testify, of your personal knowledge, as to just what was done at those times?

A. No, sir; I—what I was going to say was—I instructed them if it needed a new sill, to put one in, or, if it needed a new plank, to put it in.

Cross-Q. 59. In other words, you gave them general authority to do what was necessary; is that so?

A. Yes, sir.

Cross-Q. 60. It was your practice, was it not, during 1873, to go through your district and ascertain from the people in it how much work each had done in the way of assisting in repairs to roads and bridges, in order to estimate how much of a tax to lay to meet those repairs?

A. If I understand your question, I had to learn or had to know what it was costing to repair the roads and bridges, or, in other words, what the whole amount was costing, in order to lay a tax for the amount needed.

Cross-Q. 61. Was this estimate made and the tax levied before, or after the work was done?

A. Well, if I recollect right, it was done after the main part of it perhaps there might have been some little work done afterwards; we had to know pretty nearly.

Cross-Q. 62. State at what time of year your estimate was made.

A. Well, in the early fall, or beginning of the winter rather. I can't tell you the date.

Cross-Q. 63. What was the rate of the tax that you estimated would be necessary to meet the repairs on roads and bridges in 1873?

A. I don't recollect what rate it was.

Cross-Q. 64. Do you recollect the full amount of the tax levy for that year?

A. No, sir; I don't.

Cross-Q. 65. Was not the rate and the amount of tax in 1873 higher and larger than usual?

A. I don't know.

Cross-Q. 66. Your recollection is not very good as to the details of your administration in 1873 as supervisor; is it?

A. Well, I didn't intend just to keep that in my mind. It was some years ago. It was sometimes higher and sometimes lower. That is all I recollect about that. The precise amount of it I don't mind.

Cross-Q. 67. There was some complaint at the amount of taxes levied for the repairs of roads and bridges in 1873; was there not?

A. Not to me, that I recollect of.

Cross-Q. 68. Did you ever hear that complaint had been made that the tax for which you furnished an estimate was higher than it had been previously?

A. I don't understand you fully. That the tax that I had laid was higher? I didn't hear. No person complained to me.

Cross-Q. 69. How much were you paid at that time for your services as supervisor?

A. If my memory serves me right, it was a dollar and a half a day.

Cross-Q. 70. I mean how much did you receive in all?

[*Objected to as not cross-examination.*]

A. For my labor I got \$21. And then I got my percentage; but I don't recollect the amount of that.

Cross-Q. 71. Your percentage of what?

[*Objections continued.*]

A. Of the tax—of the amount of money that the tax amounted to.

Cross-Q. 72. About how much was the amount of the percentage you received?

[*Objected to, the witness having already distinctly stated that he does not recollect the amount.*]

A. Well, \$30 is as near as I can get at it; the exact amount I can't tell; it was more than \$20, I know, and less than \$40; the precise amount I can't tell you.

Cross-Q. 73. Is it not the fact that you gave very little of your attention to the personal supervision of the repairs on roads and bridges that were made in your part of the township in 1873, because you had so much of your own private business to attend to on the two farms and elsewhere?

A. All that I considered necessary I paid attention to.

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Cross-Q. 74. And the remainder you left for others to supervise; didn't you?

[Objected to as a deliberate perversion of the witness' testimony, and tending to confuse and mislead.]

A. Well, I left very little for others to supervise—very little.

Cross-Q. 75. Please tell us what work you personally supervised.

[Objected to, the ground having already been fully gone over.]

A. Well, nearly all the road-making, both the bridge repairing, filling up mud-holes, and opening drains—nearly all of it; there was very little done that I didn't see how it was done.

Cross-Q. 76. You have spoken of repairs made in 1873 to the race-bridge at Lisburn; do you remember of repairs being made to the road at or near that bridge, caused by a washout?

A. No, sir.

Cross-Q. 77. How is it that you remember of repairs being made to the bridge, but not to the road?

A. I don't know of any repairs that were caused by any washout; that is, at any one particular place.

Cross-Q. 78. Do you remember any repairs to the road at Lisburn?

A. Yes, some plowing along the side and shoveling in.

Cross-Q. 79. Please give the names of the persons who did the work on the road near the bridge at Lisburn about which you have testified.

[Objected to, the witness having already explained that he did not charge his memory with the names of particular persons working, as connected with the particular work which they happened to do.]

Counsel for defendants objects to this attempt of complainants' counsel to direct the witness how to answer the questions, as an unwarranted interference with the cross-examination and highly improper in any view.]

A. I don't pretend to tell that—who worked there; I have a list of those who worked on the road, but at any particular point I don't pretend to tell who the hands were.

Cross-Q. 80. As you received but \$21.00 for your labor in repairing roads and bridges in 1873, and were paid at the rate of \$1.50 a day, how many days do you make it out that you worked?

A. Fourteen days.

Cross-Q. 81. Do you wish me to understand that you worked but fourteen days during your whole term of office, lasting a whole year?

A. That is all I charged the township with; of course, I put in a

good deal of time that I didn't charge the township with ; looking after roads—or some time.

Cross-Q. 82. Days that you spent in collecting laborers, or making out your accounts, were charged, were they not ?

A. Not collecting laborers ; I might have charged a couple days—I ain't certain about that—for—what I meant is—when the auditors met for settling up ; I suppose the book shows that.

Cross-Q. 83. Wasn't a charge for only twelve or fourteen days rather a small one for a supervisor of that district to make, when you say you repaired a great many bridges, though not all that were in your district, besides superintending the work on the road ?

[Objected to as not cross-examination but mere argument, and further objected to as not exactly repeating the language of the witness, which was "I repaired a great many, but maybe not quite all of them, but a great many of the road bridges."]

A. Yes, of course it was very small ; I wasn't acting as supervisor to make money ; I hadn't asked them for the office.

Cross-Q. 84. From your preceding answer are we to understand that there was a great deal more work done than you actually charged for ?

A. There was some more done ; I won't say what amount, but there was some more done than was charged for.

Cross-Q. 85. You couldn't conscientiously charge any supervising work that you did not personally do, could you ?

A. No, sir ; I couldn't ; that is, charge the time if I was there ; some supervisors don't work, but be about to see it done.

Cross-Q. 86. Mr. Daniel Weaver, a witness called by the complainants in this cause, testified yesterday that there was a flood along the Yellowbreeches creek in 1873, and that the fences on his son's farm were washed out by that flood. State whether you have any recollection of that flood.

[Objected to as not cross-examination.]

A. I don't know of any flood that summer.

Cross-Q. 87. Then you have no better recollection of there being a flood that year than you have of any foot-bridges being carried away that year ?

[Objected to as insensible badgering.]

A. Well, if there had been foot-bridges carried away I would have

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soon got notice to put them up. That would have been the way I would have recollected of that.

Cross-Q. 88. But, as I understand you, you have no recollection of either event; am I correct?

A. Well, there was no foot-bridges carried away that summer or I would have had them to put up; no foot-bridges in my part of the township.

Cross-Q. 89. Have you, at this late day, any distinct recollection as to whether or not bridges were carried away by the flood in 1873?

[Objected to, the witness having already distinctly stated more than once that he recollects neither a flood in 1873 nor any bridges being carried away.]

A. That word "distinct," what does that mean? Well, from the fact that I have stated; that is all—that I didn't get notice to put any up, nor didn't put any up, that year during the time I was supervisor, nor no other time, of course.

Cross-Q. 90. How do you know that you didn't get notice to put any up?

A. From the fact that I didn't put any up. I don't know what you men want to know about that. I didn't put any up.

Cross-Q. 91. Are you relying on your recollection when you say you didn't put any foot-bridges up?

A. I am relying on my recollection and my book together. They decide that for me that I didn't do it.

Cross-Q. 92. Am I to understand from you that you don't recollect anything whatever about there being a flood in 1873 on the Yellowbreeches creek?

A. Not a flood to wash foot-bridges away, at any rate. There might have been water a little higher than usual; that I wouldn't say.

Recess until 2, P. M.

Cross-Q. 93. Do you know whether or not any repairs were made to the foot-bridges you have testified about, on the York county side of the Yellowbreeches creek?

A. I don't.

Cross-Q. 94. Are you acquainted with Abraham B. Shank, constable of Lower Allen township; and, if so, how long have you known him?

A. I am acquainted with him; I couldn't tell how many years.

Cross-Q. 95. Before being called to testify in this case, did you not tell

him that you did not recollect whether or not any foot-bridges were carried away along the Yellowbreeches creek in the year 1873?

[Objected to as incompetent, and because time and place are not specified with sufficient particularity.]

A. Well, at a quick question I might have said so; but, after taking time to think and having my book, together, I was sure that it was not the case.

Cross-Q. 96. Did you not tell Mr. Shaunk, within the last two weeks, that you didn't know whether or not you had repaired any foot-bridges along the Yellowbreeches creek in 1873?

A. No, sir.

Cross-Q. 97. How long ago was it that you did make that statement?

[Objected to, as the witness has not referred to any particular statement and if it is desired to find from the witness whether he did or did not make any particular statement, the question should draw his attention to the time and place; and further objected to as a willful perversion of the witness' testimony by assuming that to which he has not testified, and as tending to confuse and mislead.]

A. Not quite a year ago; some time last summer.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
26th day of April, 1884.

FRED. M. OTT,
Examiner.

H. M. BITNER.

CHARLES I. BOYER, being produced, sworn, and examined, saith:

Examined by Mr. Howson:

Q. 1. You are the same Charles I. Boyer who heretofore testified on behalf of respondents in this case in November last, [see p. 206, defendants' printed sur-rebutting record,] are you not?

A. Yes, sir.

Q. 2. You then testified that you had been running a forge known as the Liberty forge, near Lisburn, Cumberland county, since August, 1872; that you were present there in August, 1873; and that during the last-named month and year there was a flood in the Yellowbreeches creek, close to which your forge is situated. Is there or not—and was

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there or not in the year 1873—a bridge across the Yellowbreeches creek at or near your forge, and known as the Liberty Forge bridge?

[*Objected to as leading.*]

A. There was a bridge there—a foot-bridge. The foot-bridge is not there now; there is a wagon-bridge there now.

Q. 3. In your former examination you were not asked whether the flood of August, 1873, did or did not carry away the Liberty Forge foot-bridge, which, as you have stated, was there at that time; and I now wish to ask you the question whether that flood of August, 1873, did or did not carry off that foot-bridge?

A. I think it did not.

Cross-examination waived.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
26th day of April, 1884.

FRED. M. OTT,
Examiner.

CHAS. I. BOYER.

Adjourned until April 28, 1884, at 10, A. M.

APRIL 28, 1884, 10, A. M.

Examination resumed.

Present, Mr. Storrow and Mr. Howson for complainants, and Mr. Church for respondents.

JACOB S. ESHLEMAN, *being produced, affirmed, and examined, saith:*

Examined by Mr. Storrow:

My age is 49; I reside in Lower Allen township, Cumberland county, Pa.; I am a farmer.

Q. 1. Were you ever supervisor of Lower Allen township; and if so, in what year were you first supervisor?

[*Objected to as not calling for the best evidence.*]

A. In 1873.

Q. 2. Have you with you your certificate of election; and if so, will you please produce it?

A. I produce it.

[*Witness produces certificate as follows:*

"Certificate of Election.

We the subscribers, being Judge and Inspectors of an election held in the township of Lower Allen, in the county of Cumberland, on Friday the 21st day of March, A. D. 1873, do certify that you having received a majority of the votes are duly elected to the office of supervisor for the term of one year aforesaid.

A. H. Gardner, Judge.

J. B. Drawbaugh,

J. A. Scherich, Inspectors.

To Mr. Jacob Eshleman."

Certificate offered in evidence as "Exhibit Eshleman Certificate No. 1.

Certificate objected to as not properly proven.

Complainants' counsel calls attention to the fact that it purports to be signed by John B. Drawbaugh, and, moreover, is a paper that proves itself.]

Q. 3. Were you supervisor for the upper end or for the lower end that year?

A. The lower end.

Q. 4. Who was supervisor at the upper end that same year—1873?

[*Objected to as not the best evidence.*]

A. Henry Bitner.

Q. 5. Which of the foot-bridges over the Yellowbreeches belonged to the lower end of that township and came under your immediate supervision?

A. The one at Etter & Shanklin's mill.

Q. 6. State whether or not that bridge was carried away by any flood during the summer of 1873.

[*This and all other questions relating to the floods and bridges upon the Yellowbreeches creek and the circumstances thereof objected to as improper and incompetent evidence in rejoinder, the subject having been embraced and the ground covered in the evidence taken by complainants in their reply; and the protest entered with the like objection to question 21 in the deposition of William Ross is here repeated.*

Complainants' counsel reply that the defendants introduced a large amount of evidence cumulative in its character on these topics in their so-called sur-rebuttal, and the testimony of this witness is, moreover, directed to specific statements introduced by the defendants in their so-called sur-rebuttal.]

A. No, sir.

Q. 7. State whether or not you ever rebuilt that bridge in consequence of its being carried away or damaged by high water.

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[Objected to as leading, and because a proper foundation has not been laid for the question; and also same objection as to question 6.]

A. No, sir; I did not.

Q. 8. State whether or not you ever rebuilt that bridge as supervisor.

[Objection to question 6 repeated.]

A. I did not.

Q. 9. It has been alleged that in August, 1873, some damage was done to the approach at the York county end of that bridge by high water, and repaired by the persons at the York side and by the York supervisor; will you state whether or not there was any considerable time during the year 1873 when that bridge was so out of order that persons could not cross over it?

[Objected to as indefinite and leading.]

A. No more than that it was rotten—not by high water, on my side.

Q. 10. Amos Zimmerman, a witness called by the defendants, (see sur-rebutting record, p. 449,) testifies that at one time a log had become rotten on the Cumberland side and that it was replaced by a new one, and that the persons who put in the new one were Jake Eshleman, the supervisor, and Isaac Zimmerman, the carpenter; do you remember doing such a piece of work with Isaac Zimmerman on that bridge?

[Objection to question 6 repeated.]

A. Yes, sir.

Q. 11. In the deposition of the same Amos Zimmerman, p. 452, the defendants' counsel stated that that log was procured at New Cumberland in September, 1873, and put into the bridge on the 17th day of November, 1873; have you the bill for that log; if so, will you please produce it?

[Same objection, and further objected to because it does not appear in the deposition referred to by counsel for complainants that counsel for defendants stated it as a fact that the log in question was procured at the place, or at the time, or put into the bridge at the time mentioned in the question put to the witness.]

Complainants' counsel, in reply, requests the Examiner to copy upon the record the 31st and 32d questions and answers of Amos Zimmerman's deposition above referred to; the Examiner copies them as follows:

"Q. Q. 31. You have stated that you think the repairs were done in September, 1874. May you not be mistaken in this, and may they not have been done in the fall of 1873?"

Objected to as leading.

A. No, sir.

Q. Q. 32. If it should be shown in evidence that the log for the Cumberland end of the bridge was procured at New Cumberland in September, 1873, and put into the bridge on the 17th day of November, 1873, what would you think then?

Objection continued, this being an incompetent and improper way of getting at the witness' recollection.

A. I wouldn't think nothing else but that my memory must have served me wrong."]

A. Yes, sir; here it is. [*Witness produces bill, which the Examiner copies, as follows:*

"John F. Lee

Henry Bayler.

New Cumberland, Pa., Dec. 31, 1873.

M J. Eshleman for Lower Allen township.

To Lee & Bayler Dr

Bills cut to order.

Lumber delivered at all points on the Northern Central R. R.: also at all points on the Cumberland Valley R. R.

Sep. 16	To W. P. Lumber 213-30c.	6.39
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1874

Feby. 12

Reed. paymt.

Lee & Bayler."]

Q. 12. Have you with you your supervisor's book for 1873; and if so, will you point out the entries of charges for putting in that log, and read them to the Examiner, to be taken down as part of your answer?

A. Yes, sir.

[*Witness produces book and reads as follows:*

"17 Jacob Eshleman 1 day	1.25
17 David Didlow $\frac{1}{4}$ day	1.00
17 Samuel Didlow $\frac{1}{4}$ day	1.00
17 Isaac Zimmerman to haling and working,	2.00"

The entries are under date of November, 1873.

Same objection as to question 6.]

Q. 13. In whose handwriting are those entries that you have just read?

[*Same objection.*]

A. My own.

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Q. 14. Did you write them at or about the time you did the work ?

[*Same objection, and as leading.*]

A. I did, sir ; in the evening.

Q. 15. Did you do any other work on that bridge while you were supervisor in 1873, or not ?

[*Same objection as to question 6.*]

A. No more than a little repairing at the bannister.

Q. 16. Who is the Jacob Eshleman named in the first of those entries, and who did the work represented by that entry ?

[*Same objection.*]

A. My father was the Jacob Eshleman, and my brother Matthias worked for him.

[*Latter part of answer objected to by Mr. Church as irresponsible.*]

Q. 17. Who was the supervisor on the York county side of that bridge in 1873 ?

[*Objected to as not calling for the best evidence.*]

Complainants' counsel refer to the 29th question in the deposition of Amos Zimmerman, and the 8th question and answer in the deposition of Henry S. Magonell [defendants' sur-rebuttal, p. 964.]

A. I can't mind that any more.

Q. 18. At the time you did this job of putting in the new log at the Cumberland end of that bridge in 1873, was there any work going on at the York end of the bridge ?

[*Same objection as to question 6.*]

A. Not at that time.

Q. 19. Is the bank on the Cumberland side of the bridge a high and very steep bank, or low and flat ?

[*Same objection.*]

A. A high and steep.

Q. 20. How many spans were there in that bridge over the water ?

[*Same objection.*]

A. Three.

Q. 21. Do you remember how long that bridge was—the three spans together ?

[*Same objection ; and further objected to as incompetent, the qualification of the witness to answer the question not having been shown.*]

A. About a hundred and twenty-five or thirty feet.

Q. 22. Were you supervisor of Lower Allen for the year 1874 ?

[*Same objection, and further objected to as not calling for the best evidence.*]

A. No, sir.

Q. 23. Were you supervisor of Lower Allen for the year 1875 ?

[*Same objection.*]

A. Yes, sir.

Q. 24. Will you produce your certificate for that year, that the examiner may copy it upon the record as part of your answer ?

[*Same objection.*]

A. Yes, sir; here it is.

[*Witness produces certificate which the examiner copies as follows :*

"Certificate of election.

We the subscribers being Judge and Inspectors of an election held in the township of Lower Allen in the county of Cumberland on Tuesday the 16th day of February 1875 do certify that you, having received seventy-five votes, are duly elected to the office of supervisor for the township of Lower Allen aforesaid.

Signed,

W. H. Keller, Judge.

H. M. Darr,

W. Kiester, Inspectors.

To Mr. Jacob Eshelman."]

Certificate objected to as "Exhibit Eshleman Certificate No. 2."

Certificate objected to as not properly proven.]

Q. 25. Were you summoned last winter by the defendants to go to Harrisburg and testify in this case ?

[*The same objection as to question 6.*]

A. Yes, sir.

Q. 26. Did you go there and see defendants' counsel, and let them see your book and the bill you have produced here ?

[*Same objection.*

A. Yes, sir.

[*The book produced is offered for the inspection of defendants' counsel.*]

Cross-examined by Mr. Church:

Cross-Q. 27. Was this book, which you have produced, kept entirely by yourself ?

A. It was until Shank got it.

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Cross-Q. 28. I mean, were all the entries made by yourself?

A. Yes, sir; the writing was all done by myself.

Cross-Q. 29. Please look at the two pages which I now show you, and state if they are in your handwriting.

A. I know all about that, but that is the 1875 book, and it is the 1873 that we are talking about. Those two pages are not in my handwriting.

Cross-Q. 30. Please examine the two pages that I now show you, and state whether they are in your handwriting.

A. No, sir.

[Complainants' counsel requests that the pages be marked. Examiner marks them.]

Cross-Q. 31. Do you find any dates upon the two pages I have just shown you?

A. No, sir.

Cross-Q. 32. Do you find those pages filled with entries, or not?

A. How do you mean? That is different, you know; that is every man's work alone, kept apart, so that if there were any more they could be put in. Do you mean in between? There is no work there; there are only the names and amount; the work done is on the other book.

Cross-Q. 33. I notice on pages 6, 7, and 8 a large number of entries purporting to have been made in August, 1873; can you account for this number of entries at that particular time?

[Objected to because the word "large" is vague and indefinite; also because it is misleading, inasmuch as there are more entries in June than there are in August.]

Counsel for the defendants objects to the counsel for the complainants testifying in this manner, and insists that the book itself be put in evidence, and objects to all testimony in regard to the entries in the book unless the latter is put in evidence.]

A. That is the month that I done the most work.

Cross-Q. 34. What was the occasion of there being the most work to do in August?

A. Being it was needed.

Cross-Q. 35. What was the cause of so much repairs being needed at that time?

A. Well, August is the month that there is always pretty heavy rains.

Cross-Q. 38. Do you remember particularly the rains of August, 1873; if you do, and there is anything particular associated with them in your mind, please state it.

A. I don't, sir.

Cross-Q. 39. Do you remember the flood that occurred along the Yellowbreeches creek in 1873?

A. No, sir; I don't.

Cross-Q. 40. You have no recollection about it at all?

A. No, sir; I have not.

Cross-Q. 41. On page 8 of your book under date of August 29, 1873, I noticed this entry:

"29 Samuel H. Hertzler,

$\frac{1}{2}$ day

0.62 $\frac{1}{2}$ "

Do you remember for what particular work that entry was made?

A. No, sir; I don't.

Cross-Q. 42. On the same page I notice an entry under date of September 7, which reads as follows:

"7 Charles Sweeney.

207 feet of oak plank

4.71

2 lbs of spikes

0.14"

Who was that Charles Sweeney that is referred to in said entry?

A. Supervisor in York county.

Cross-Q. 43. On page 9 I notice another entry under date of September 29, which is as follows:

"29 Ephriam Holsinger

$\frac{1}{2}$ day

0.62 $\frac{1}{2}$

to one day

1.00"

Do you remember to what work that entry related?

A. I can't tell you.

Cross-Q. 44. Do you know what work the following entry on page 9 related to, to wit:

"17 Isaac Zimmerman

to haling and working,

2.00" ?

A. Yes, sir.

Cross-Q. 45. What was it?

A. Hauling that stick that we put in the foot-bridge, and putting it in.

Cross-Q. 46. Does the entry state that the work was for putting in that stick?

A. No, sir.

Cross-Q. 47. How is it that while you are not able to recollect the

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flood of 1873 along the Yellowbreeches, nor to remember to what work the other entries in your book related, you are enabled to state so positively that that entry about Zimmerman related to the hauling of that log for the foot-bridge?

A. Being that it was the last work that I done in the year.

Cross-Q. 48. On the page following the entry last quoted there are a series of entries under the names Frederick Long, Benjamin Kauffman, Daniel Fetrow, William Keister, William Kohler, Emanuel Kauffman Daniel Weaver, and Benjamin Spong; state whether or not these entries are in your handwriting, and when the work charged in them was done.

A. Yes, sir; they are in my handwriting; the work was done in 1873.

Cross-Q. 49. At what time in the year?

A. I can't tell you.

Cross-Q. 50. Was it done after the work entered on the preceding page?

A. This is work that people done when I wasn't along—that came in when I came to settle.

[Same page is numbered by the Examiner as page 10, and marked with his name and the date.]

Cross-Q. 51. Was it not the custom for the tax-payers to do work on roads and bridges, and, after it was done, advise the supervisor of the fact, and get him to credit them with it?

A. I told them to do it, and I'll come around for the bill.

Cross-Q. 52. They employed their own hands, did they not?

A. Yes, sir.

Cross-Q. 53. What was the rate of taxation for repairs to roads and bridges in Lower Allen township during your term of office in 1873?

A. I can't tell you that.

Cross-Q. 54. Does you district contain more, or less bridges than the upper end of the township?

A. Less.

Cross-Q. 55. I notice on page 11 there is entered the following entry:

" Jacob S. Eshleman

70½ days

1 Day laying tax

105.75

2.00

107.75 "

Does this entry represent the charge that you made for personally superintending road and bridge work done in your part of the township in 1873?

A. Yes, sir.

Recess until 2, P. M.

Cross-Q. 56. Do you consider your charge a large or a small one for superintending the work on roads and bridges in your end of the township?

A. I consider it a reasonable charge.

Cross-Q. 57. What other names has the Etter & Shanklin bridge gone by?

A. Well, I can't understand that right; I never knew any other name for it.

Cross-Q. 58. In your answer to cross-question 27, you said that the book produced was kept entirely by yourself until Shank got it; did you mean by that that there were any entries in it that had been made by Shank?

A. No, sir.

Cross-Q. 59. Does this book contain your supervisor's accounts for 1875?

A. After it was copied out of the other one—1876—after it was copied out of the other book.

Cross-Q. 60. What other book do you refer to?

A. A book that is at home.

Cross-Q. 61. I ask you again if this book contains your supervisor's accounts for 1875?

A. Yes, sir.

Cross-Q. 62. Did you keep those accounts yourself?

A. Yes, sir.

Cross-Q. 63. Are the entries covering pages 12, 13, 14, and 15 in your own handwriting?

A. No, sir.

Cross-Q. 64. In your answer to the 59th cross-question you speak of entries having been copied from another book, from which I understand that this book which you produce is not a book of original entry; am I correct?

[Objected to as an attempt to confuse and mislead, previous inquiries having been directed to and calling the witness' attention especially to the

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entries in 1875, while the present question is made to include the whole book, both that part relating to 1873 and that part relating to 1875.]

A. That is the way I put down the 1873, and the 1875 was copied out of the original book. I am sorry to say I made a mistake here. It was the 1876 that was copied, and the 1875 wasn't—not in this book.

Cross-Q. 65. The 1875 account, then, though not copied from another book, was not set down in this book in your own handwriting; am I correct?

A. These accounts—the 1875 accounts—were copied out of this book into another. Some of the 1875 accounts are set down in my handwriting and some are not.

Cross-Q. 66. Then others besides yourself set down some of those accounts for 1875; do I understand you aright?

A. Yes, sir.

Cross-Q. 67. On the 14th page of the book there occurs this entry
"David Spangler,

1 Day,	1.25
" " horse and wagon,	.50"

Can you tell me why that entry was made, and what work on the part of Mr. Spangler that entry refers to?

A. I can't.

Cross-Q. 68. Why not?

[*Objected to as insensible.*]

A. Because I can't.

Cross-Q. 69. Was all the work done in your part of the township in 1873 entered in this book which you have produced?

A. Yes, sir.

Cross-Q. 70. Will you please turn to the entry which records the fact that repairs were made to the bannister of the Etter & Shanklin foot-bridge that year as testified in your direct examination?

A. It is not mentioned.

Cross-Q. 71. Was the bannister you referred to a hand-rail on the steps or approach to the bridge?

A. On the steps and on the bridge.

Cross-Q. 72. It is a fact then, is it not, that repairs were made by you on the Etter & Shanklin foot-bridge in 1873 which are not recorded in that book of yours which you have produced?

A. Yes, sir; it only took a couple of hours.

Cross-Q. 73. Who did the carpenter work on those repairs?

A. I did, myself.

Cross-Q. 74. Who helped you ?

A. Nobody, that I mind of.

Cross-Q. 75. The lumber referred to in answer to question 11, which you say you got from Lee & Bayler for repairing the foot-bridge in 1873, came in how many pieces ?

[*Objected to unless the question be made more specific.*]

A. In one.

Cross-Q. 76. State where, in the bridge, it was put.

A. From the Cumberland side in.

Cross-Q. 77. About how long was it ?

A. About thirty-five or forty.

Cross-Q. 78. And how thick ?

A. That I cannot tell.

Cross-Q. 79. Is it in the bridge now ?

[*Objected to as not cross-examination and as incompetent.*]

A. That I don't know.

Cross-Q. 80. Please state, as nearly as you can, how thick that log was.

[*Objected to as mere badgering and inquiring for guess-work, the witness having already stated that he cannot tell.*]

A. I can't tell you.

Cross-Q. 81. Was it six inches, or was it over a foot ?

A. I don't know.

Cross-Q. 82. Was it square or round ?

A. It wasn't either.

Cross-Q. 83. What shape was it ?

A. It was wider one way than the other.

Cross-Q. 84. How much wider one way than the other, and was the wide, or narrow side uppermost ?

[*Objections renewed.*]

A. It was edged up; I don't know how much wider the one side was than the other.

Cross-Q. 85. Was it to the right, or to the left in the bridge as you go from the Cumberland side over ?

A. That I cannot mind.

Cross-Q. 86. What work did Zimmerman do on that log ?

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A. He helped to put it in ; there wasn't nothing much to do on it.

Cross-Q. 87. I see he has charged two dollars for what he did, according to the entry in that book, which you say refers to that work. That meant a whole day's work, didn't it ?

A. It meant for putting it in and hauling it.

Cross-Q. 88. Please explain the entry which I quoted in cross-question 42, in regard to two hundred and seven feet of oak plank and two pounds of spikes, under the name of Charles Sweeney.

A. For fixing the bridges on the road.

Cross-Q. 89. Did Sweeney—who, as I understad you, was supervisor on the York county side—sometimes get his supply of materials from you ?

A. No, sir.

Cross-Q. 90. In question 18 you were asked, in substance, whether, at the time you did this job of putting in the new log at the Cumberland end of the bridge, there was any work going on at the York end of the bridge, and you answered, "Not at that time." You evidently had in your mind work that had been done at the York end of the bridge at some other time. Please state at what other time there was work done at the York end of the bridge.

[Objected to as a gratuitous inference on the part of counsel, not warranted by the part of the testimony quoted, and as tending to confuse and mislead the witness, and further objected to as not cross-examination.]

A. None at all that I know of, that summer.

Cross-Q. 91. Do you remember of the approach to the Etter and Shanklin bridge on the York county side being carried away at any time since the beginning of 1873 ?

A. I do, but not in 1873.

Cross-Q. 92. When was it first carried away according to your recollection ?

[Objected to as vogue and indefinite, no limit of time being fixed.]

A. I can't tell you.

Cross-Q. 93. You remember the fact that it was carried away, but you can't tell when ; do I understand you aright ?

A. Yes, sir.

Cross-Q. 94. It was not your business to look after the repairs to the York county end, was it ?

A. No, sir.

Cross-Q. 95. Repairs made at that end, then, made no impression upon your memory; am I correct?

[*Objected to as argumentative.*]

A. Yes, sir.

[*Complainants' counsel leaves the book referred to in the deposition of this witness in the custody of the Examiner for the present.*]

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 28th day of April, 1884.

FRED. M. OTT.

Examiner.

JACOB S. ESHLEMAN.

ADAM H. ZINN, *being produced, sworn, and examined, saith:*

Examined by Mr. Sorrow:

My age is 40. I reside in Lower Allen township, Cumberland county, Penna. I am a miller and saw-miller, and farmer.

Q. 1. What is the name of the mill you run—what name is it commonly known by?

A. Zinn's clover-mill.

Q. 2. But, in fact, it is a saw-mill and grist-mill; is that it?

[*Objected to as leading.*]

A. It is at the present time.

Q. 3. How long have you been running that mill?

A. Four years.

Q. 4. Do you own it, and about how long have you owned it?

A. Four years.

Q. 5. Who owned it before you?

A. My father, Adam Zinn.

Q. 6. Did he own it a good many years or not?

A. Thirty years.

Q. 7. How large a farm do you have now beside the mill?

A. Fourteen acres.

Q. 8. Then I judge you don't make much of a business of farming; what is the fact about that?

[*Same objection, also because immaterial.*]

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A. No, sir.

Q. 9. Has any relative of yours owned the mill further up the stream, commonly known as Zinn's fulling-mill?

A. Yes, sir; John Frederick Zinn, my brother.

Q. 10. Did he own it a good many years?

[*Same objection.*]

A. No, sir.

Q. 11. Who owned it before him?

A. Israel Boyer.

Q. 12. When did your wife die?

A. October 10, 1874.

Q. 13. Where were you living then?

A. On the farm right below my mill.

Q. 14. Were you running the mill at that time?

A. No, sir.

Q. 15. Who owned the farm that you were living on then?

A. My father.

Q. 16. Did you have a serious sickness yourself about the time of your wife's death, October 10, 1874?

[*Objected to as leading, and especially as to the time.*]

A. Yes, sir.

Q. 17. Did you employ any man to do your farm-work during the time of trouble, caused by your sickness and your wife's death, that you have testified about?

[*Last objection repeated.*]

A. Yes, sir.

Q. 18. Who was it?

A. James Shaffer.

Q. 19. Did that James Shaffer have a brother Sam married to Ellen Schell, daughter of Andrew Schell?

[*Objected to because leading.*]

A. He had, but he is dead.

Q. 20. How did he die?

[*Objected to as immaterial, irrelevant, and incompetent.*]

A. The cause of his death was falling off of an apple tree.

Q. 21. You say that James Shaffer worked for you at the time of

your wife's death in 1874; about how long did he work for you then, and was it by the day or by the month?

A. Two or three months—one month by the month.

Q. 22. What kind of work did he do for you at that time?

A. Cutting corn, husking corn, and other fall work.

Q. 23. Did James Shaffer work for you any the year before your wife died—that is, in 1873—or not?

A. Yes, sir.

Q. 24. What kind of work did he do for you when he worked for you the year before your wife died?

A. Haymaking and harvest.

Q. 25. Did he work for you any in 1875, the year after your wife died?

A. Yes, sir.

Q. 26. What was the principal kind of work he did for you in 1875, the year after your wife died?

A. Cultivating corn.

Q. 27. While he was working for you cultivating corn in the fore part of 1875, did you furnish him as a hand to help do any work on the foot-bridge at the clover-mill?

[Objected to because clearly leading and obviously intended to instruct the witness as to his answer; and counsel for defendants protest against the manifest guidance of the witness by the counsel during this line of examination. And this and all other questions relating to the floods and bridges upon the Yellowbreeches creek and the circumstances thereof objected to as improper and incompetent evidence in rejoinder, the subject having been embraced and the ground covered in the evidence taken by the complainants in their reply; and the protest entered with the like objection to question 21 in the deposition of William Ross is here repeated.]

Complainants reply that the defendants introduced a large amount of evidence cumulative in its character on these topics in their so-called sur-rebuttal, and the testimony of this witness is, moreover, directed to specific statements introduced by the defendants in their so-called sur-rebuttal. And complainants' counsel also reply that the defendants do not seem to appreciate the distinction between instructing the witness what his reply shall be and directing his attention to the proper subject-matter inquired of. For examples of instructing questions, counsel for complainants refer to nearly all the direct interrogatories put to the three hundred witnesses called for the defense.]

1958 TESTIMONY FOR COMPLAINANTS IN REJOINDER.

A. Yes, sir.

Q. 28. What work did he do on the bridge when you furnished him on that occasion?

[*The second part of the above objection repeated.*]

A. Hauling the timber into the water.

Q. 29. Whose team did he have, if any?

[*Same objection as to question 28.*]

A. Mine.

Q. 30. Who came to you to have you furnish a hand on that occasion?

[*Same objection.*]

A. Daniel Weaver, the supervisor.

Q. 31. Did you see them working on the bridge on that occasion?

[*Same objection and also because leading.*]

A. Yes, sir.

Q. 32. Who was the boss carpenter?

[*Same objection as to question 28.*]

A. David Smith.

Q. 33. Whom, also, do you remember seeing at work on that bridge on that occasion?

[*Same objection.*]

A. John Greenfield, John McAllister, William Umberger, and Louis Umberger.

Q. 34. What were they doing to the bridge at that time? What was the matter with it?

[*Same objection.*]

A. Putting it up; it had been thrown down by the high water and the ice.

Q. 35. When, or about when?

[*Same objection.*]

A. About March, 1875.

Q. 36. How near was that bridge to the house where you then lived, and was it in sight from your house or barn?

[*Same objection, and also because leading.*]

A. It was in sight of my barn; it was one good field's breadth from my house.

Q. 37. Whose farm did that field belong to?

[*Same objection as to question 28.*]

A. My father's.

Q. 38. Who was farming that field in 1875, and 1874, and 1873?

[*Same objection.*]

A. I was farming it myself.

Q. 39. You say that the Zinn bridge which Daniel Weaver, and David Smith, and others rebuilt in 1875 was carried away by ice and high water about March of that same season. Were any of the old timbers brought ashore and saved, and do you know who hauled any of them ashore?

[*Same objection, and also because leading and argumentative.*]

A. Yes, sir; I hauled them out of the water—or dragged them.

Q. 40. Whose farm did you drag those bridge-timbers on to?

[*Same objection as to question 28.*]

A. My father's farm.

Q. 41. The same farm which you have several times spoken of as your father's farm?

[*Same objection.*]

A. Yes, sir.

Q. 42. Did anybody help you haul those bridge-timbers ashore; and if so, who?

[*Same objection.*]

A. Yes, sir; James Shaffer.

Q. 43. Did anybody ask you to have that bridge timber hauled ashore; and if so, who?

[*Same objection, and also because leading and calling for hearsay statements.*]

A. Yes, sir; Daniel Weaver, supervisor.

Q. 44. About how long was that hauling the logs ashore before you furnished Shaffer to help at the job of putting up the bridge, as you have testified?

[*Same objection as to question 28.*]

1960 TESTIMONY FOR COMPLAINANTS IN REJOINDER.

A. Just shortly before.

Q. 45. Did you furnish James Shaffer to do any work about that bridge, or did he do any work about that bridge to your knowledge at any time, except hauling the timbers ashore, as you have testified, and hauling them into the water when David Smith was putting up the bridge, as you have testified ?

[*Same objection, and also because leading.*]

A. No, sir.

Q. 46. Do you remember what part of the bridge it was that you hauled out of the creek ashore—whether the string-pieces, or the trestles, or the bannisters, or what ?

[*Same objection as to question 28.*]

A. The long pieces.

Q. 47. Who was running the mill when that job of rebuilding the bridge was done ?

[*Same objection.*]

A. My father.

Q. 48. Had he been running it for four or five years before that, or not ?

[*Same objection, and also because leading.*]

A. Yes, sir.

Recess until April 29, 1884, at 10, A. M.

APRIL 29, 1884, 10, A. M.

Examination resumed.

Present, same counsel.

Examination of Adam Henry Zinn by Mr. Storrow, continued :

Q. 49. Who was farming the meadow field on the Cumberland side of the creek next below the Zinn bridge in 1873, 1874, and 1875 ?

[*Same objection as to question 28.*]

A. I was.

Q. 50. During those three years did you have occasion to cross the Zinn bridge in the ordinary course of your business in carrying on the farm ?

[*Same objection.*]

A. Yes, sir.

Q. 51. What was there in the business of your farm, or the situation of any part of it, that gave you occasion to cross that bridge in the ordinary course of carrying on the farm?

[*Same objection.*]

A. One of the fields was on the York county side.

Q. 52. It has been suggested that that bridge was carried away in August, 1873, and was down during a considerable portion of that summer and fall; is that the fact or not?

[*Same objection.*]

A. No, sir.

Q. 53. It has been suggested that that bridge was carried away in August, 1873, and was down until David Smith and John Greenfield put it up at the time you sent James Shaffer to help them; is that the fact or not?

[*Same objection.*]

A. No, sir.

Q. 54. Do you know Henry M. Bitner, at one time supervisor of Lower Allen, at the upper end?

[*Same objection.*]

A. Yes, sir.

Q. 55. Did he ever put up that foot-bridge as supervisor?

[*Same objection.*]

A. No, sir.

Q. 56. You testified that that bridge was carried away by high water and ice in the early part of 1875. How do you know that the ice had anything to do with carrying it away?

[*Same objection.*]

A. I saw it on the ice.

Q. 57. Whereabouts was it—at what part of the creek—that you saw it on the ice?

[*Same objection.*]

A. On the York county side.

Q. 58. Did the ice with the bridge on it stay there long enough for you to see it; and if so, what made it stay there?

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[*Same objection, also because leading.*]

A. It was chained to a tree.

Q. 59. Was that anywhere near the place where you found the sticks when you hauled them ashore at Mr. Weaver's request, as you have testified?

[*Same objection, also because leading.*]

A. Yes, sir.

Q. 60. I wish to know about the banks of the Yellowbreeches at Zinn's bridge and for some little distance below. Are both sides low meadows, or are both sides steep bluffs; or is one side low meadow and the other side steep bluff? What is the fact about that?

[*Same objection as to question 28.*]

A. Below the bridge there is one side bluff and the other side meadow. At the bridge, the York county side is bluff and the Cumberland side meadow; also below.

Q. 61. It appears in the deposition of Mrs. Ellen Shaffer (defendants sur-rebuttal, p. 294) that her father, Andrew Shell, lived about half a mile from Zinn's clover-mill; did he live on the York side or the Cumberland side—say from 1870 to the time of his death?

[*Same objection, and also because indefinite as to time.*]

A. The Cumberland side.

Q. 62. About what year did he die?

[*Same objection as to question 28.*]

A. 1877.

Q. 63. Mrs. Shaffer said that during 1872 she lived in John Hamilton's house; which side was that on?

[*Same objection, and also because immaterial.*]

A. The York county.

Q. 64. She said that during 1871 she lived in Henry Addick's tenant-house, near the forge; which side was that on?

[*Same objection.*]

A. The York county.

Cross-examined, de bene esse, by Mr. Dixon:

Cross-Q. 65. You have stated, in answer to question 14, that you were not running the clover-mill in October, 1874; had you been running the mill previous to that time?

A. No, sir.

Cross-Q. 66. When did you commence to run the clover-mill?

A. In 1880.

Cross-Q. 67. Then, previous to 1880, you didn't have anything to do with the clover-mill in the way of running it?

A. No, sir.

Cross-Q. 68. What business were you engaged in previous to 1880?

A. Farming.

Cross-Q. 69. Then, previous to 1880, farming was your principal business, was it?

A. Yes, sir.

Cross-Q. 70. How large a farm did your father, Adam Zinn, have?

A. Sixty-three acres.

Cross-Q. 71. Previous to 1880 were you farming the sixty-three acres at any time?

A. Yes, sir.

Cross-Q. 72. When did the clover-mill cease to be a clover-mill?

A. About 1874.

Cross-Q. 73. Who turned it into a saw-mill and a grist-mill?

A. My father. Can I recall that? Chopping and grist-mill.

Cross-Q. 74. Then it was not used as a saw-mill?

A. Yes, sir.

Cross-Q. 75. Why did you ask to recall that then?

A. I attached the saw-mill myself.

Cross-Q. 76. What did you mean when you said "Can I recall that?"

A. I said my father built it as a grist-mill and a saw-mill.

Cross-Q. 77. Is that statement what you desire to recall?

A. Yes, sir.

Cross-Q. 78. Then am I to understand that your father did not turn it into a saw-mill and grist-mill?

[*Objected to as a mere waste of time, the witness having explicitly answered the inquiry.*]

A. Yes, sir.

Cross-Q. 79. Who did turn it into a saw-mill and grist-mill?

A. I attached the saw-mill.

Cross-Q. 80. Who turned it into a grist-mill?

[*Same objection.*]

A. My father.

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Cross-Q. 81. When did your father build it as a grist-mill?

[Same objection.]

A. About 1875.

Cross-Q. 82. Then, since the time it ceased to be a clover-mill, about 1874, as you have stated, it has been known not as a clover-mill but as a grist-mill, has it not?

[Question objected to as carefully ambiguous, indefinite, and misleading, capable of being correctly answered either way, and of being subsequently interpreted in a different way.]

A. Chopping and grist-mill, and saw-mill the last few years.

Cross-Q. 83. That is, saw-mill the few years since 1880, when you added the saw-mill attachment.

A. Yes, sir; if I understand you—the few last years.

Cross-Q. 84. When did your brother, John Frederick Zinn, own or run the fulling-mill?

[Objected to because the questioner should inform the witness whether he is to state when his brother owned it, or whether he is to state when his brother ran it.]

A. About 1870.

Cross-Q. 85. To what time?

[Further objection, that the preceding question did not ask the witness when his brother began to own or run it, but merely to state some time when he either owned it or ran it; and the present question assumes that the witness has testified that his brother began to own it or run it about 1870, which assumption is not warranted by any testimony already given.]

A. Till about 1878; the exact date I am not able to state.

Cross-Q. 86. Is that the way that it became "commonly known as Zinn's fulling-mill?"

A. Yes, sir.

Cross-Q. 87. The foot-bridge at that mill was right at the public road that ran along the creek to Shiremanstown; was it not?

A. From the fulling-mill to Shiremanstown.

Cross-Q. 88. And people going along that road from Shiremanstown sometimes spoke of that foot-bridge as Zinn's bridge; did they not?

[This and all other questions relating to the fulling-mill bridge objected to as outside the line of the direct examination. The question also objected to as immaterial.]

A. No, sir.

Cross-Q. 89. I suppose it wasn't even very seldom called Zinn's bridge, was it?

[Same objection.]

A. It was called the fulling-mill bridge.

[Question repeated.]

Objected to as above, and because it implies omniscience on the part of the witness.]

A. It was called the fulling-mill bridge.

[Question repeated.]

A. It wasn't called Zinn's bridge.

Cross-Q. 90. Mr. David Smith, a witness in behalf of complainants, in answer to question 7 of his deposition, spoke of the "fulling-mill bridge, very seldom called Zinn's bridge." Would you say that he was mistaken in that statement?

[Question objected to on the ground that it is a distinct misstatement of the witness' testimony, the complainants' counsel then examining Mr. Smith having inadvertently used the language, "those two Zinn bridges," and the witness, Smith, corrected him by the phrase, "rebuilt the fulling-mill bridge, very seldom called Zinn's bridge." See record, p. 1895, supra.]

A. Very seldom called Zinn's bridge.

Cross-Q. 91. Who worked for you in the year 1872, in carrying on your farm?

A. I don't know.

Cross-Q. 92. Who worked for you in the year 1871, in carrying on your farm?

A. I don't know.

Cross-Q. 93. Is it because it is difficult for you to now remember just which years, and just what men worked for you eight or ten years ago?

A. Yes, sir.

Cross-Q. 94. But you have remembered very distinctly, have you not, just the specific work that James Shaffer did for you, and the specific years that he worked in the labor of haymaking and harvest, in 1873, but cutting corn and husking corn in 1874, but in cultivating corn in 1875; have you not, on your direct-examination?

A. Yes, sir.

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Cross Q. 95. Will you explain to us why it is that you can tell us nothing about the men working for you in 1871 and 1872, and yet can tell us so specifically about Mr. Shaffer, and the precise work done by him in 1873, 1874, and 1875, and each of those years.

A. I have nothing to remind me of it so closely.

Cross-Q. 96. What has reminded you that James Shaffer was working in haymaking in 1873 ?

A. The death of my wife, which was in the year afterwards.

Cross-Q. 97. Without offense, let me ask you what relation was there, if any, between the work of haymaking, which went on every year, and the death of your wife ?

A. Them was the three only years I had James Shaffer working regularly for me.

Cross-Q. 98. But the question relates to the haymaking; what relation did that have, since it was done every year ?

[*Objected to as fully and fairly answered.*]

A. My memory cannot remind me for years.

Cross-Q. 99. Whom else did James Shaffer work for besides yourself in 1873 ?

[*Objected to as not cross-examination.*]

A. I don't know.

Cross-Q. 100. Who worked for you on the farm after Mr. Shaffer stopped working for you in 1873 ?

A. I don't know of anybody.

Cross-Q. 101. Let me remind you by asking if Mr. T. H. Hamilton did not work for you in 1873, stopping in September of that year.

A. I don't know.

Cross-Q. 102. Do you mean you don't remember whether he did or not ?

A. Yes, sir.

Recess until 2, P. M.

Cross-Q. 103. I suppose you don't remember any flood in the Yellow-breeches creek in the year 1873 ?

A. No, sir.

Cross-Q. 104. Let me remind you of a little circumstance. Don't you remember of a plow being left in the lowland of your farm, near the creek, at that time, and the water rising in the creek so high as to

flood that part of the land, and covering the plow so that you could only see the handle sticking out of the water ?

A. No, sir.

Cross-Q. 105. Let me remind you of another little circumstance. There was on your farm then a pale-fence, along side of the lane as you went from your barn down to the creek ; was there not ?

A. Yes, sir.

Cross-Q. 106. And the water in August of that year rose so high as to flood that land, and to detach or wash away some of those palings ; did it not ?

[Objected to so far as it embodies mere matter of assertion by counsel.]

A. I don't remember of that.

Cross-Q. 107. Counsel for complainants, in view of the testimony that has been given upon that subject, formerly admitted upon the record, after cross-question 50 in the deposition of Daniel Weaver, that there was a flood on the Yellowbreeches creek in August, 1873. Now, will you please explain how it is that, although you were then living on the banks of the creek, and although you had fields on both sides of the creek, yet you have now no recollection whatever of that flood ?

A. My memory don't teach me so far back as that, unless I have something particularly to remind me of it.

Cross-Q. 108. Then, unless your memory is now guided in some way, you are unable to remember the particulars and details of little occurrences that happened so many years ago ; is that so ?

A. Yes, sir.

Cross-Q. 109. Let me mention another circumstance: Don't you remember Mr. Thomas H. Hamilton's working for you in the summer of 1873, and your going with your wife to a camp-meeting that summer, and Mr. Hamilton's riding a horse and accompanying you ?

[Objected to as not cross-examination.]

A. I don't remember of it.

Cross-Q. 110. Do you remember whether or not you went with your wife to a camp-meeting that summer ?

[Objection continued.]

A. I don't remember.

Cross-Q. 111. Let me mention still another circumstance: State whether or not you remember that a party of gentlemen from Harrisburg

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were out there fishing in a sort of pic-nic for several days, and that you and Mr. Hamilton went down one evening and saw them have some fun with one of their number who was under the influence of liquor.

[Objected to as not cross-examination, but mere matter of assertion, without any foundation in the evidence; and also as too vague and general.]

A. No; I don't remember.

Cross-Q. 112. You don't remember, either, that any repairs were made on that pale-fence I referred to, in the spring of 1874; do you?

A. No, sir.

Cross-Q. 113. Do you remember, even, whether James Shaffer worked for you by the day, off and on, during the spring and summer of 1874?

A. No, sir; he did not.

Cross-Q. 114. Didn't work any day's work for you in the summer of 1874?

A. Yes, sir; in the after part of the summer.

Cross-Q. 115. Mr. James Shaffer has testified in answer to the question "Just when was it that you went to work for Adam Henry Zinn?" Answer. "In the spring of 1874" Will that statement refresh your memory in any respect?"

[Objected to so far as it insinuates that the witness' memory needs refreshment on that subject, he having already given his recollection in several answers. Counsel for defendants protests against this interference with the cross-examination.]

A. No, sir.

Cross-Q. 116. You have stated that James Shaffer worked for you that year two or three months—one month by the month. What month was it that he worked by the month?

A. About the last of October he started in by the month.

Cross-Q. 117. How had he been working before that?

A. By the day.

Cross-Q. 118. What did James Shaffer do, days that he was not working for you?

[Objected to as not cross-examination, and as incompetent.]

A. I don't know.

Cross-Q. 119. Do you remember how long he would be absent at a time?

A. No, sir.

Cross-Q. 120. You stated particularly that you remembered seeing, working on the bridge on one occasion about nine years ago, John Greenfield, John McAllister, William Umberger, and Louis Umbergér, mentioning also Daniel Weaver and David Smith. Please explain how it is that you are enabled to remember for such a length of time this long list of names of persons you saw casually on a single occasion, while you are unable to remember the names of the men who worked for you on your farm and assisted you in your farming operations, referred to by me in cross-questions 91, 92, 93, 95, 100, 101, and 102?

A. By the case of serious sickness, and death of my wife.

Cross-Q. 121. Please explain what possible connection there is between the case of serious illness, and death of your wife, in 1874, and your memory of the long list of names of persons whom you casually saw working on a bridge at another time?

A. James Shaffer was working for me at the time of the sickness and death of my wife, and the year before and the year after.

Cross-Q. 122. I did not ask about James Shaffer; but what I ask is that you explain what possible connection there is between the death of your wife and your memory of the long list of names of persons whom you saw working together upon an occasion in another year, and that about nine years ago?

[*Objected to as a mere attempt to confuse and badger the witness.*]

A. My father lived in the house with me a year after my wife's death, and one of the men who were working on the bridge lived in my father's house in 1875?

Cross-Q. 123. Is that all the explanation you have to offer touching the connection between your wife's death and your memory of that long list of names?

[*Objected to as simply assailing the witness with unintelligible and abstract propositions of no materiality whatever.*]

A. Yes, sir.

Cross-Q. 124. Who worked for you cultivating corn in the year 1874?

A. No one but myself.

Cross-Q. 125. Were there any trees, or was there any hill between the bridge and your house in 1873 and 1874?

A. No, sir.

Cross-Q. 126. Then, was the bridge in sight from your house?

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A. In sight of my barn.

Cross-Q. 127. When you hauled some logs out of the creek upon the farm (referred to by you in question 40) were they hauled upon the lot that lay between your barn and the bridge ?

A. Right outside the lot—at the bridge.

Cross-Q. 128. You mean, upon the land in continuation or adjoining the lot I inquired about ; do you ?

A. Yes, sir ; right on the banks of the creek, on the public road.

Cross-Q. 129. Next to that lot ?

[*Objected to as vague and indefinite, the lot meant not being specified.*]

A. Yes, sir.

Cross-Q. 130. Was the township on the opposite or York county side, Fairview township ?

A. Yes, sir.

Cross-Q. 131. You have referred to Henry M. Bitner, mentioned as at one time supervisor of Lower Allen township ; do you remember who was supervisor of Fairview township in 1873 ?

[*Objected to as not cross-examination.*]

A. No, sir.

Cross-Q. 132. Do you remember who was supervisor in 1873 in either the upper or lower district of Fairview township ?

[*Same objection.*]

A. No, sir.

Cross-Q. 133. Do you remember who was supervisor either in the upper or lower district of Lower Allen township in the year 1873 ?

[*Same objection.*]

A. Henry Bitner, I think.

Cross-Q. 134. Do you remember whether he was supervisor in the upper or lower district in 1873 ?

[*Same objection.*]

A. In the upper.

Cross-Q. 135. When you saw that bridge on the ice on the York county side chained to a tree, as you have stated, in what position did the bridge lie ; so that the chain held it ?

A. Just as it was on the piers—bolted together.

Cross-Q. 136. Then, as I understand you now, when you saw it, it

was not carried away, but was still in its position on the piers; am I correct in this understanding?

[Objected to as a misstatement of what the witness had said.]

A. It was laying on the ice—the ice had gorged—somewhat racked. It was not on the piers.

Cross-Q. 137. Then, where was it lying, if it was off the piers?

A. Upon the water, after the ice passed away.

Cross-Q. 138. I mean on the occasion when, as you have testified, you saw it?

[Objected to as mere badgering, the question having been answered over and over again.]

A. The first time I saw it, it lay on the ice, chained to a tree.

Cross-Q. 139. Did the long pieces stretch across the creek then, or did they lie along the York county side?

A. Towards the middle of the creek from the York county side.

Cross-Q. 140. Then I suppose the force of the current didn't sweep the long pieces around along the York county side, although it was chained to that side and it had left its piers.

[Objected to as an attempt to confuse and mislead, the question not stating what period of time is referred to, and the witness having referred to two distinct periods of time, one before the ice went and one after.]

A. It turned it towards the York county shore.

Cross-Q. 141. But, either when the ice was there or only water, the current didn't sweep the pieces around against the York county shore, although the bridge was chained to that shore?

A. No, sir; it did not move it around against the shore.

Cross-Q. 142. During that high water or ice gorge, was there any shoal or island in the water that would prevent the force of the current from sweeping it around against the York county shore after the bridge had left its piers?

Objected to as ambiguous, no reference having been made to high water.]

A. A tree top had lodged there some time before; the ice and the bridge rested against and on it.

Cross-Q. 143. On which shore was this tree top?

A. The York county shore, close to where the bridge was chained

Cross-Q. 144. Were the pieces then swept by the force of the cur-

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rent around to the York county shore, and against this tree top on the York county shore?

[*Objected to as ambiguous and not cross-examination.*]

A. Against the tree top.

Cross-Q. 145. And this was on the York county shore; was it?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 146. When you hauled those sticks ashore at Mr. Weaver's request, as you have testified, what kind of tackle did you use, if any?

A. Not any.

Cross-Q. 147. Did you haul them ashore by hand, or did you employ a team?

A. I hauled them to the shore with my own team.

Cross-Q. 148. I ask you again, what kind of tackle did you use to attach the team to the sticks?

[*Objected to as trifling and as assuming that for which there is no warrant in the testimony.*]

A. Not any; I tied them to the wagon and drew them to the shore.

Cross-Q. 149. What tackle did you use in tying them to the wagon?

A. I used what I call a log-chain.

Cross-Q. 150. How close to the wagon were they tied?

A. Up as close as we could get them under the wagon, against the axle-tree.

Cross-Q. 151. Were the horses still standing on the bank, or were the horses, the wagon, and yourself all in the stream when you tied the logs to the wagon?

A. We were all in the stream while I was tying the logs to the wagon.

Cross-Q. 152. Who helped you on that occasion?

A. James Shaffer.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
29th day of April, 1884.

FRED. M. OTT,
Examiner.

ADAM H. ZINN.

WILLIAM UMBERGER, being produced, sworn, and examined, saith:

Examined by Mr. Storrow:

My age is twenty-nine; I reside in Lower Allen township, Cumberland county, Pennsylvania; I am a laborer.

Q. 1. Whose farm do you live on?

A. I am just there on a visit now—at my father's, John Umberger's. I have been in Kansas for the last two years.

Q. 2. Where did you live before you went to Kansas?

A. With my father on the same farm; I was born and raised there.

Q. 3. About how far is that farm from the mill commonly known as Zinn's clover-mill?

A. About twenty yards, I suppose—from the line of the farm to the mill.

Q. 4. Does the meadow on the Cumberland side of the Yellowbreeches, just above the mill, belong to that farm; and if so, what did you use it for along about 1873, 1874, and 1875?

A. It belongs to the farm; it was used for pasture.

Q. 5. Does the field on the high land back of that belong to the farm; and what was that used for in 1873, 1874, and 1875?

A. It belonged to the same farm, and was used for farming.

Q. 6. Was your meadow next to the mill low land and easily flooded by high water, or not?

A. It was.

Q. 7. Do you remember whether you ever helped rebuild Zinn's foot-bridge at the mill at a time when Daniel Weaver, the supervisor, and David Smith, boss-carpenter, were putting it up?

[Objected to as leading; and this and all other questions relating to the floods and bridges upon the Yellowbreeches creek, and the circumstances thereof objected to as improper and incompetent evidence in rejoinder, the subject having been embraced and the ground covered in the evidence taken by the complainants in reply; and the protest entered with a like objection to question 21 in the deposition of William Ross is here repeated.]

Complainants' counsel reply that the defendants introduced a large amount of evidence, cumulative in its character on these topics, in their so-called sur-rebuttal, and the testimony of this witness is, moreover, directed to specific statements introduced by the defendants in their so-called sur-rebuttal.]

A. I do.

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Q. 8. Will you name the other persons, if you remember, who worked on the bridge, or helped on the job, at the same time you did?

[*Same objection.*]

A. My father, John Umberger, Louis Umberger—my brother—David Smith, John Greenfield, and James Shaffer.

Q. 9. What part of the work did James Shaffer do?

[*Same objection.*]

A. He hauled timbers up to the bridge.

Q. 10. Do you remember whether James Shaffer was working for anybody else at the time?

[*Same objection.*]

A. He was working for Adam Henry Zinn.

Q. 11. In what year was this that you helped rebuild that bridge with David Smith and the others you have mentioned?

[*Same objection.*]

A. In 1875.

Q. 12. If there is any particular circumstance which aids your memory to fix upon that particular year as the year in which the bridge was rebuilt, will you please state what it is?

[*Same objection.*]

A. It was the year that a man by the name of John McAllister lived at the mill.

Q. 13. How do you know that was the year he lived at the mill; what helps you to fix that in your mind?

[*Same objection.*]

A. Because he helped put the bridge up, and he lived there but one year.

Q. 14. If there is any circumstance that helps you to recollect that 1875 was the year he lived there, will you please state it?

[*Same objection.*]

A. We had a sister taken suddenly sick, and John McAllister was sent to tell Father, who was attending a sale.

Q. 15. How soon after that attack did your sister die?

[*Same objection, and as leading.*]

A. About ten days, as near as I can recollect.

Q. 16. When did she die? What was the date of her death?

A. The 16th of March, 1876.

Adjourned until April 30, 1884, at 10, A. M.

APRIL 30, 1884, 10, A. M.

Examination resumed.

Present, same counsel, except Mr. Dixon.

Examination of William Umberger by Mr. Storrow, continued:

Q. 17. It has been alleged that the Zinn bridge was carried away by high water in the summer of 1873, and staid down until it was put up by Daniel Weaver and David Smith; is that the fact or not?

[*Same objection.*]

A. It is not.

Q. 18. It has been alleged that the Zinn bridge was carried away by high water in August, 1873; is that the fact or not?

[*Same objection.*]

A. To the best of my knowledge it was not.

Q. 19. Could that bridge have been carried away, so that people had to cross there in boats, or wade, after the flood went down, without your knowing it?

[*Same objection and as calling for mere opinion.*]

A. I think not.

Cross-examination by Mr. Church, de bene esse:

Cross-Q. 20. What particular work did you do on the Zinn bridge when it was repaired, as you have stated?

A. I helped to raise the timbers.

Cross-Q. 21. What carpenter work was done upon that bridge?

A. Floor and railings put on it.

Cross-Q. 22. Were old, or new materials used?

A. Both.

Cross-Q. 23. Do you remember where the new materials came from?

A. From New Cumberland.

Cross-Q. 24. How many new string-pieces or stretchers, if any, were put in?

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A. I don't remember.

Cross-Q. 25. Give your best recollection.

[*Objected to as asking for guess-work and as immaterial.*]

A. I can't recall what particular timber was used in the bridge.

Cross-Q. 26. State, as nearly as you can, the length of the string-pieces or stretchers that were used in repairing that bridge.

[*Same objection.*]

A. About fifty feet, as near as I can recollect.

Cross-Q. 27. You are not positive about the number that were used, if I understand you.

[*Same objection, and because it is indefinite and ambiguous.*]

A. Not the number of new ones.

Cross-Q. 28. Who brought the new string-pieces or stretchers from New Cumberland?

A. Daniel Weaver's team hauled them.

Cross-Q. 29. I suppose the object in getting such long stretchers was that they might be put into the bridge with as little cutting and splicing as possible; am I correct?

[*Question objected to as absurd on its face, and as asking for mere inference and guess-work as to whether counsel's supposition is correct.*]

A. If I understand what you mean by stretchers, they were got as near the length of the old ones as possible.

Cross-Q. 30. State what, in your opinion, I refer to by stretchers.

[*Same objection.*]

A. The logs that span from one pier to the other.

Cross-Q. 31. Your understanding is correct. Now, please tell us just what the carpenter work in repairing that bridge consisted in.

A. It consisted in finishing the bridge after the stretchers had been put on. There was some repairing at the piers.

Cross-Q. 32. How long did it take to complete the job?

A. I don't know.

Cross-Q. 33. How long did you work at the job?

A. One day, or part of it.

Cross-Q. 34. Who paid you?

A. I was working for my father; no one paid me.

Cross-Q. 35. Was the bridge entirely down at that time?

A. It was.

Cross-Q. 36. Where were the timbers of the old bridge?

A. They were lodged below the bridge, along the creek.

Cross-Q. 37. Some of the old timbers, such as some of the old stretchers, had been carried away, had they not?

A. Yes, sir.

Cross-Q. 38. Where was the old bridge when you saw it down?

A. I don't remember just where it was.

Cross-Q. 39. Was it up, or down the stream from the place where it had before stood?

A. It was down the stream.

Cross-Q. 40. Was it on the York, or Cumberland side?

A. I don't remember.

Cross-Q. 41. Please state when it was that you saw this bridge down.

A. In the spring of 1875.

Cross-Q. 42. Did you see it down more than once in that or any other year?

A. Yes, sir; in the spring of 1884.

Cross-Q. 43. In direct question 19 you were asked: "Could that bridge have been carried away, so that the people had to cross there in boats, or wade, after the flood went down, without your knowing it?" and you answered: "I think not." To what flood had you reference in giving your answer?

A. The flood of 1875.

Cross-Q. 44. Do you remember any other flood than that which occurred in 1875, as you relate?

A. I can't remember any.

Cross-Q. 45. You remember that there was a flood, but you mean that you can't remember when it was; do I understand you aright?

A. No, sir; I remember of the flood being in the spring that took away the bridge in 1875.

Cross-Q. 46. And that is the only flood along the Yellowbreeches creek that you remember of, is it?

A. No, sir; I remember of a great many floods on the Yellowbreeches creek.

Cross-Q. 47. That is the only one which you can fix the date of, though; is it not?

A. At that time it is.

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Cross-Q. 48. Well, give us the date of any flood that occurred along the Yellowbreeches creek any other time.

A. I don't think I can—any particular year—as there are floods very often.

Cross-Q. 49. Did any floods occur before 1875 to your knowledge?

A. Yes, sir; there was.

Cross-Q. 50. Any large ones?

A. Yes, sir.

Cross-Q. 51. Which of Zinn's bridges was it—the one at the clover-mill or the one at the fulling-mill—that you assisted to repair?

A. The one at the clover-mill.

Cross-Q. 52. Where were you at work in 1875?

A. At home with my father.

Cross-Q. 53. In 1874?

A. At home.

Cross-Q. 54. In 1873?

A. At home.

Cross-Q. 55. Who else were employed on your father's farm in 1873 besides yourself?

A. My brother Louis.

Cross-Q. 56. Any one else?

A. No, sir.

Cross-Q. 57. How long have you known John McAllister?

A. Since the spring of 1875.

Cross-Q. 58. How long have you known James Schaffer?

A. Ever since I was a boy.

Cross-Q. 59. Where was he working in 1873?

[*Objected to as not cross-examination.*]

A. I don't know, sir.

Cross-Q. 60. Where was he working in 1874?

[*Same objection.*]

A. I don't know.

Cross-Q. 61. Did you see James Shaffer often in 1873 and 1874?

[*Same objection.*]

A. Not very often; we didn't travel together.

Cross-Q. 62. Did you do much traveling in those years?

A. I traveled to the barn, I expect, every morning.

Cross-Q. 63. Where did Shaffer live in those years—1873 and 1874?

[*Same objection.*]

A. At home with his father.

Cross-Q. 64. Where was that?

[*Same objection.*]

A. In York county.

Cross-Q. 65. Did you see Shaffer more, or less frequently in 1873 and 1874 than you did in 1875?

[*Objected to as not cross-examination, and as mere trifling and waste of time.*]

A. I don't know.

Cross-Q. 66. In your direct examination you stated that your sister died the 16th of March, 1876; how do you fix that fact?

A. Because I remember of it.

Cross-Q. 67. Was she sick long?

A. She had been ailing all winter, but was only confined to her bed about ten days, as near as I can recollect.

Cross-Q. 68. At what mill was John McAllister living, as stated in your answer to direct question 12?

A. At Zinn's clover-mill.

Cross-Q. 69. Did he work at the mill?

A. No, sir.

Cross-Q. 70. What was being done at the mill at that time?

[*Objected to as not cross-examination.*]

A. When it was in repair they were chopping and hulling clover-seed.

Cross-Q. 71. How early in 1875 did John McAllister commence to live at the mill?

A. I can't recollect—some time in May, I think.

Cross-Q. 72. What makes you think it was in May?

[*Same objection, and as incompetent.*]

A. Because he—it was the second time he moved that spring.

Cross-Q. 73. What time of year was it that you helped to put up that bridge?

A. Some time before haymaking.

Cross-Q. 74. Is that the most definite answer you can give?

A. Yes, sir.

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Cross-Q. 75. When did John McAllister move from the mill?

A. In the spring of 1876.

Cross-Q. 76. How far from the mill did he live before he moved to the mill?

[*Objected to as not cross-examination.*]

A. About three miles.

Cross-Q. 77. Do you know whether or not a book has been found containing an entry relating to the repairs of Zinn's clover-mill bridge, about which you have been testifying?

[*Objected to as not cross-examination, and further as too vague and general.*]

A. None but—I suppose the supervisor has one. I never saw it.

Cross-Q. 78. Have you not heard that there was another book containing an entry about that matter?

[*Same objection, and also as inquiring for hearsay.*]

A. I suppose Zinn has an account of Shaffer's work.

Cross-Q. 79. Have you not heard of any other book than the supervisor's and Zinn's book containing an entry about the repairs to the bridge in question?

[*Same objection.*]

A. No, sir, not that I know of.

Cross-Q. 80. Have you not been told by any one that the repairs to Zinn's clover-mill bridge, concerning which you have testified, were made in 1875?

[*Objected to on the same grounds.*]

A. I heard some talk about it, but no particular reference was made to dates or books.

Cross-Q. 81. Have you not received aid from others in arriving at the date you have given in regard to the repairs to that bridge?

[*Objected to as vague, indefinite, and immaterial.*]

A. No, sir.

Cross-Q. 82. Has not your memory been refreshed by other persons in regard to any of the circumstances about which you have testified?

[*Same objection.*]

A. No, sir; it has not.

Cross-Q. 83. Your memory is clear, is it not, that the timber with which the clover-mill bridge was repaired came from New Cumberland?

A. Yes, sir; I think it did.

Cross-Q. 84. And that Daniel Weaver's team hauled it?

A. Yes, sir.

Cross-Q. 85. And that some of that timber consisted of long material suitable for stretchers?

A. I don't remember what kind of lumber, only there was a load of lumber brought.

Cross. 86. In answer to my cross-question 28, you stated in substance that Daniel Weaver's team hauled the new string-pieces or stretchers from New Cumberland. Do I understand you now to say that those string-pieces or stretchers didn't come from New Cumberland?

A. The lumber came from New Cumberland, but I do not remember what it consisted of.

Cross-Q. 87. Give us the date when you went to Kansas.

A. The 14th of March, 1882.

Cross-Q. 88. With whom did you work there?

A. I worked part of the time with John F. Hardesty; the rest of the time I was working for myself.

Cross-Q. 89. Whereabouts in Kansas did you work for John F. Hardesty?

A. In Chase county.

Cross-Q. 90. For whom did you work immediately before you went to Kansas?

A. For my father.

Cross-Q. 91. Where?

A. At home, where I am stopping now.

Cross-Q. 92. What is Hardesty's post-office address?

A. Elmdale, Chase county, Kansas.

Cross-Q. 93. When you worked for yourself in Kansas, where did you work?

A. In Chase county, near the same place that Hardesty lives.

Cross-Q. 94. Were you doing farm-work there?

A. Part of the time.

Cross-Q. 95. Did you work for your father in 1873, 1874, and 1875?

A. Yes, sir.

Cross-Q. 96. You have testified that you worked for your father in 1873, 1874, and 1875, and that you also worked for him just before you

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went to Kansas. Will you please tell us all the places you worked between 1875 and the time when you went to Kansas?

[Objected to so far as the question gratuitously assumes that the witness has testified that he worked for persons other than his father before he went to Kansas.]

A. I didn't work anywhere else, excepting an occasional day among the neighbors.

Cross-Q. 97. Please give the name of any neighbor for whom you worked in 1876.

[Objected to as mere trifling and waste of time.]

A. I can't remember of any.

Cross-Q. 98. Please state what job of work you did outside of your father's farm in 1876.

[Same objection.]

A. I helped work on the roads.

Cross-Q. 99. What else?

[Same objection.]

A. Nothing, that I can remember of.

Cross-Q. 100. What other work besides what you did on the clover-mill bridge did you do in 1875?

[Same objection.]

A. I don't remember of anything else.

Cross-Q. 101. Did you do any other work that you remember of?

[Same objection.]

A. Not that I can remember of.

Cross-Q. 102. Were you in the habit of doing day's work at other places than on your father's farm in the year 1875?

[Same objection.]

A. No, sir.

Cross-Q. 103. Did you occasionally do so?

[Same objection.]

A. Very seldom while I was at home.

Cross-Q. 104. Give the name of any person for whom you worked in 1877 besides your father.

[Same objection.]

A. I can't recall any.

Cross-Q. 105. Do you remember any other events that happened in 1875 besides those you have related?

A. I don't know that I can just at present.

Cross-Q. 106. Then, I understand, that this little over a day's work, which you say you did at the clover-mill bridge in 1875, stands out solitary and alone in your recollection of events happening in 1875; am I correct?

A. I remember it by the circumstances I have already mentioned.

Recess until 2, P. M.

Cross-examination continued by Mr. Jacobs:

Cross-Q. 107. In your 40th, 41st, and 42d answers you say that you saw the clover-mill bridge down in the spring of 1875, and also in the spring of 1884; are we to understand that those are the only two years in which you saw that bridge down?

A. Yes, sir; to the best of my recollection.

Cross-Q. 108. And you lived in the immediate neighborhood of it how many years?

A. All my life, excepting two years; in all about twenty-seven years.

Cross-Q. 109. I suppose you may have seen it down at times of which you do not now recollect; may you not?

[*Objected to as hypothetical and argumentative.*]

A. Yes, sir; it might be possible.

Cross-Q. 110. And it may have been down whilst you lived near it, at times when you did not know it; may it not?

[*Same objections.*]

A. Yes, sir; it might.

Cross-Q. 111. In your 82d answer you testified that your memory has not been refreshed by any other persons in regard to any of the circumstances about which you have testified. Have you not sought the aid of others to refresh your memory with regard to the dates of floods and carrying away of bridges along the Yellowbreeches creek?

[*Objected to as vague, indefinite, and immaterial.*]

A. I have had some conversations about floods, but I depended entirely upon myself about the putting up of the bridge at Zinn's clover-mill in 1875.

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Cross-Q. 112. With whom did you have those conversations?

A. With my father and with Adam Henry Zinn.

Cross-Q. 113. Anybody else?

A. Not that I remember of.

Cross-Q. 114. Are you acquainted with John S. Hamilton, who lives in Fairview township, York county, Pa?

A. Yes, sir.

Cross-Q. 153. Did you never have any conversation with him with regard to the floods and the carrying away of bridges and rebuilding of the same along the Yellowbreeches creek?

A. Yes, sir, I had; I had forgotten that.

Cross-Q. 116. When was that?

A. About three weeks ago.

Cross-Q. 117. Where did it take place?

A. At Hake's mill.

Cross-Q. 118. How did you come to enter into that conversation with him?

A. I don't know that I had any particular reason more than ordinary conversation.

Cross-Q. 119. How happened you to be at Hake's mill at that time?

A. I stopped on my way coming from Harrisburg.

Cross-Q. 120. What had you been at Harrisburg for?

A. I went over to see about the rates West and to see Mr. John C. Comfort.

Cross-Q. 121. What business had you with John C. Comfort?

A. I wanted to see when I would be likely to be called to testify in this case.

Cross-Q. 122. Had you been previously notified that your testimony would be wanted in this case?

A. Yes, sir; I had.

Cross-Q. 123. Who had notified you?

A. John Comfort.

Cross-Q. 124. Had he been to see you about this matter; and, if so, how often?

A. Three times.

Cross-Q. 125. When did he first come to see you about it?

A. I think it was on the 8th day of March.

Cross-Q. 126. When next did he come to see you about it?

A. I can't just tell what time; maybe a couple of weeks after that; maybe not so long.

Cross-Q. 127. When was the third time?

A. Last Sunday a week.

Cross-Q. 128. That was after your visit to Harrisburg to see him, was it?

A. Yes, sir.

Cross-Q. 129. Had he asked you to come to Harrisburg to learn when your testimony would be needed in this case?

A. No, sir; he had not.

Cross-Q. 130. What induced you, then, to go to see about the matter?

[*Objected to, the witness having stated that he went to Harrisburg for another purpose also.*]

Objection protested against as an unwarranted interference with the cross-examination, and as tending to instruct the witness how he should answer the question.]

A. I went there for the purpose of finding out what the rates were west, and, wanting to leave home for a few days, I stopped at the Bolton House to see Mr. Comfort whether he would need me before I would get home.

Cross-Q. 131. And it was on your return home from this visit to Harrisburg that you had this conversation with Mr. Hamilton, was it?

A. Yes, sir.

Cross-Q. 132. Will you tell us what that conversation was, as nearly as you can remember it?

A. It was as regards the floods, and we had some conversation about the telephone. I don't remember exactly what was said about the floods, but I told him I had been in Mr. Drawbaugh's shop once, and he told us about his telephone.

Cross-Q. 133. Did you tell him when that visit to Mr. Drawbaugh's shop was?

[*Objected to as not cross-examination.*]

A. I believe I did, if I remember.

Cross-Q. 134. When did you tell him it was?

[*Same objection.*]

A. I told him I thought it was in 1878.

Cross-Q. 135. Did you not tell him that it was when Daniel Draw-

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baugh's brother, J. B. Drawbaugh, Esq., was a candiadate for some county office in Cumberland county?

[Same objection, and as an attempt to examine this witness in an illegal and improper way as to new matter.]

Counsel for defendants replies that he is not attempting to examine the witness with regard to his knowledge of Daniel Drawbaugh's telephone, but is simply inquiring from the witness all that was said in his conversation with Mr. Hamilton; and this in pursuance of cross-question 132, to which no objection was made by complainant's counsel.

Complainant's counsel replies that the present question is directed to special alleged talk, having no relation whatever to the subject of his examination-in-chief, or to any cross-examination that could be legitimately based on that examination-in-chief; and that what the witness may have said to another person as to such ungermane and irrelevant subject, cannot be evidence for any purpose in this case. Consequently the question is further objected to as not calling for evidence.]

A. I told him I thought that was the time.

Cross-Q. 136. Have you now stated all that you can recollect that was said upon the subject in your conversation with Mr. Hamilton?

[Objections continued.]

A. I may have told him more, but I am not sure of what it was. We had some conversation about my visit to Mr. Drawbaugh's shop.

Cross-Q. 137. Referring now to that part of your conversation with Mr. Hamilton which related to the bridges along the Yellowbreeches creek: did you not tell him that Comfort wanted you to go to Philadelphia to testify upon the subject, but that you could not fix any dates?

A. No, sir; to the best of my recollection I didn't say anything about that—about not remembering the date.

Cross-Q. 138. Did you not question Mr. Hamilton with regard to the dates of the carrying away and repairing the foot-bridges along the Yellowbreeches creek?

[Objected to as immaterial.]

A. Yes, sir; I did.

Cross-Q. 139. For what purpose did you do so?

[Objection continued.]

A. For information regarding the other bridges, excepting the bridge at Zinn's clover-mill, in 1875.

Cross-Q. 140. Why did you want to get information with regard to the other bridges?

[*Objection continued.*]

A. Nothing in particular, as I only expected to testify about the bridge at Zinn's clover-mill.

Cross-Q. 141. And do you mean to say that you asked him no question with regard to that bridge?

A. I may have spoke about it.

[*Question repeated.*]

[*Repetition objected to as unnecessary.*]

A. No, sir; I don't mean to say that.

Cross-Q. 142. You told him further, did you not, that you had never been down to Philadelphia, and wanted to go down and see the city?

[*Objected to as immaterial.*]

A. No, sir; it is not likely that I told him that, because I was in the city in 1876.

Cross-Q. 143. Did you tell him anything like that?

[*Same objection.*]

A. If I understand you, I did not.

Cross-Q. 144. Did you or not tell him in substance that you wanted to take a trip to Philadelphia to see the city?

[*Same objection.*]

A. No, sir; not that I remember of.

Cross-Q. 145. Have you now given us all of that conversation with Mr. Hamilton that you can remember of?

A. I believe that is all I can recall at present.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
30th day of April, 1884.

FRED. M. OTT,
Examiner.

WM. M. UMBERGER.

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JACOB KIMMEL, *being produced, sworn, and examined, saith:*

Examined by Mr. Storrow:

Q. 1. Are you the same Jacob Kimmel who testified for the defendants (see their sur-rebuttal record, p. 178)?

A. Yes, sir.

Q. 2. Do you know the fulling-mill on the Yellowbreeches which formerly belonged to Israel Boyer, and has more lately been known as Zinn's fulling-mill?

A. Yes, sir.

Q. 3. In what year were you married, and where and when did you first begin housekeeping?

A. I was married in 1868, and went to housekeeping in the spring of 1869 at Lisburn forge, called Liberty forge, I believe.

Q. 4. Did you ever work in that fulling-mill before you were married?

[*Objected to as irrelevant and immaterial.*]

A. Yes, sir.

Q. 5. Did you ever work in the fulling-mill after you were married?

A. No, sir; not working in wool.

Q. 6. What kind of work did you ever do at or connected with that fulling-mill after you were married?

A. I went to do some carpentering work there after that.

Q. 7. You say that you went to housekeeping at Liberty forge in the spring of 1869; how long did you stay there?

A. Four years.

Q. 8. When you left there in the spring of 1873, at the end of the four years, where did you go to, and where were you employed?

A. At Good Hope woolen-mill at the Connodoguinet creek.

Q. 9. About how far from Zinn's fulling-mill was that?

A. About eight or nine miles, as near as I can tell.

Q. 10. Did your family, or your relatives that composed your household, move with you to Good Hope mill when you went there in the spring of 1873?

A. My mother-in-law went along; that is all; my wife had died in 1870 at Liberty forge.

Q. 11. How long did you continue to work in the Good Hope woolen mill?

A. One year.

Q. 12. Where did you move to next?

A. I moved to Mechanicsburg.

Q. 13. How long did you live in Mechanicsburg?

A. I have lived there ever since.

Q. 14. Were you at the Zinn fulling-mill at all during the summer and fall of 1873?

A. No, sir.

Q. 15. A witness named Mrs. Ellen Shaafter testified for the defendants [see their sur-rebuttal record, page 294.] It appeared that she was the widow of Samuel Shaafter, and daughter of Andrew Shell; do you know her?

A. Yes, sir.

Q. 16. She testified that in the summer of 1873 she went to the Zinn fulling-mill and bought some stocking-yarn, and paid cash for it, and bought it of Jacob Kimmel; did you sell her any yarn, or anything else, at that fulling-mill in the summer or fall of 1873, or see her at all during that summer or fall at that fulling-mill?

[Objected to as irrelevant, immaterial, and because seeking to introduce into the case an issue collateral and too remote.]

A. No, sir.

Q. 17. Do you know any person by the name of Jacob Kimmel, except yourself, who has lived in the neighborhood of that fulling-mill between 1870 and 1875?

[Same objection.]

A. No, sir.

Q. 18. Did you know this Mrs. Ellen Shaafter while you lived in that part of the county, and before you moved away to the Connodoguinet in 1873?

[Same objection.]

A. Yes, sir.

[Deposition objected to for the reasons given in the objection to question 16, and cross-examination declined.]

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
30th day of April, 1884.

FRED. M. OTT,
Examiner.

JACOB KIMMEL.

1990 TESTIMONY FOR COMPLAINANTS IN REJOINDER.

HARVEY F. HARRO, *being produced, sworn, and examined, saith:*

Examined by Mr Storrow:

My age is thirty-four; I reside in Fairview township, York county, Penna.; I am a farmer.

Q. 1. Do you know the fulling-mill on the Yellowbreeches in Lower Allen township, Cumberland county, known as Zinn's fulling-mill?

[This and all other questions relating to the floods and bridges upon the Yellowbreeches creek, and the circumstances thereof, objected to as improper and incompetent evidence in rejoinder, the subject having been embraced and the ground covered in the evidence taken by complainants in their reply; and the protest entered with the like objection to question 21 in the deposition of William Ross is here repeated.]

Complainants' counsel reply that the defendants introduced a large amount of evidence cumulative in its character upon these topics in their so-called sur-rebuttal; and the testimony of this witness is, moreover, directed to specific statements introduced by the defendants in their so-called sur-rebuttal.]

A. Yes, sir.

Cross-Q. 2. Did you ever work in that mill; and if so, when did you begin to work there, and how long did you work?

[Same objection.]

A. Yes, sir; I began to work there in the spring of 1870, about the 1st of April, and worked there five years within about a month.

Q. 3. Where did you move to at the end of those five years, which would be about March, 1875?

[Same objection.]

A. I moved over in Joseph Wickersham's house, near Yocumtown, York county.

Q. 4. Who was running the Zinn fulling-mill when you began to work there in the spring of 1870?

A. A firm called Zinn and Mills—John F. Zinn and John H. Mills.

Q. 5. Did you continue to work as a hand for them during the whole five years?

[Same objection.]

A. No, sir.

Q. 6. When did you cease to work as a hand, and in what capacity did you work after that?

[Same objection.]

A. After two years and six months were up, then I went in as a partner with Mills in Zinn's place.

Q. 7. Did you continue as a partner with Mills during the rest of your five years; that is, from the fall of 1872 to the spring of 1875?

[*Same objection.*]

A. Yes, sir.

Q. 8. Do you know Jacob Kimmel, now of Mechanicsburg, who has just testified?

A. Yes, sir.

Q. 9. Did you know him during any part of the time while you worked at Zinn's fulling-mill?

[*This and the preceding question objected to by counsel for defendants as irrelevant, immaterial, and seeking to introduce an issue collateral and too remote.*]

A. I did.

Q. 10. Did he work at Zinn's fulling-mill during any part of the five years while you were there?

[*Same objection.*]

A. The first two years he worked some at carpenter-work, but not as a hand in the fulling-mill at the wool business.

Q. 11. Was the foot-bridge at Zinn's fulling-mill carried away at any time while you worked there as a hand, before you became a partner?

[*Same objection as to question 1, and also because irrelevant and immaterial.*]

A. Yes, sir.

Q. 12. In what year?—and state any fact which helps or enables you to fix the year in which it was carried away.

[*Same objection.*]

A. It was the year that Ezekiel Worley was supervisor; I think it was in 1871; I am not positive about that year.

Q. 13. Who rebuilt the bridge after it was carried away at that time?

[*Same objection.*]

A. I can recollect of David Smith and John Greenfield.

Q. 14. Do you remember how it was carried away?

[*Same objections.*]

A. By high water.

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Q. 15. At what season of the year was it carried away?

[*Same objections.*]

A. In the fore part of the season, or in the spring.

Q. 16. Did David Smith rebuild it immediately after it was carried away, or some months after?

[*Same objections, and as leading.*]

A. Some time afterwards; may be two months or a little over that.

Q. 17. Was there any way of getting across while the bridge was down; and if so, what was it?

[*Same objection as to question 11.*]

A. For a short time we crossed in a skiff or small flat—then put up a temporary bridge to walk on, near about where the old one stood.

Q. 18. What was that temporary bridge made out of?

[*Same objection.*]

A. Out of the long logs of the one that was washed away or was torn down.

Adjourned until May 1, 1884, at 10, A. M.

MAY 1, 1884, 10, A. M.

Examination resumed.

Present, same counsel.

Examination of H. F. Harro by Mr. Storrow, continued:

Q. 19. What house did you live in during the five years you worked at the fulling-mill?

[*Same objection.*]

A. I lived in the house that belonged to the property that the fulling-mill was on.

Q. 20. At what post-office did you generally get your mail, and where did you usually go to go to the store?

[*Same objection.*]

A. At Lisburn for both.

Q. 21. What road did you usually take yourself in going to Lisburn?

[*Same objection.*]

A. Cross the creek at the fulling-mill, and go by way of the forge, crossing the creek there again.

Q. 22. Which side of the creek did you live on, and which side is Lisburn on?

[*Same objection.*]

A. I lived on the Cumberland side, and Lisburn was on the Cumberland side.

Q. 23. Then you crossed from the Cumberland side to the York side at the fulling-mill bridge; then went up on the York side to the forge-bridge, crossed there again to the Cumberland side, and kept on up to Lisburn; is that the way you traveled?

[*Same objection.*]

A. Yes, sir.

Q. 24. Was the forge foot-bridge carried away at any time while you lived at the fulling-mill, to your knowledge?

[*Same objection.*]

A. A part of it was; I am not certain about all of it.

Q. 25. At what season of the year was that?

[*Same objection.*]

A. I can't tell.

Q. 26. When were you married?

[*Same objection.*]

A. The 22d of February, 1874.

Cross-examination by Mr. Jacobs, de bene esse:

Cross-Q. 27. Was the high water which carried away the fulling-mill bridge during the year Ezekiel Worley was supervisor, as you have testified, the only high water along the Yellowbreeches during the five years you lived at the fulling-mill?

A. No, sir.

Cross-Q. 28. What other high water do you remember during that period?

A. There was one in 1873, and there was one or two other ones ordinary high.

Cross-Q. 29. Was the one in 1873 extraordinarily high?

A. It was about as high as any one while I was there.

Cross-Q. 30. At what time of the year 1873 did it occur?

A. It was in the after part of the summer.

Cross-Q. 31. What damage, if any, was done by that high water at or about the fulling-mill?

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A. None; that is, with the exception of wetting the floors.

Cross-Q. 32. How far from the usual bed of the creek did the fulling-mill lie?

A. Not over from forty to sixty feet; that is, from the edge of the fulling-mill.

Cross-Q. 33. How far above the usual level of the stream was the lower floor of the fulling-mill?

A. Near five feet; it might have been a little more or less; that is, from low-water mark.

Cross-Q. 34. Then, as I understand, at the time we have been speaking of, namely, the after part of the summer of 1873, the water of the creek came into the fulling-mill and over the floor; is that correct?

A. Yes, sir.

Cross-Q. 35. How deep over the floor was it?

A. Well, it was twelve inches, or near that.

Cross-Q. 36. The water also came up around the mill, I suppose, did it not?

A. Yes, sir.

Cross-Q. 37. How far from the mill was the house in which you lived?

A. About a hundred and twenty-five yards; it might have been a hundred and fifty.

Cross-Q. 38. Who was living in that house at that time besides yourself?

A. John H. Mills.

Cross-Q. 39. Were there any hands who were working in the fulling-mill boarding in the house at that time?

A. I was there, and Mills; and there was a man working journey work, that left near the time the flood was.

Cross-Q. 40. What was his name?

A. Chapman. He gave his name Newlin or Newman, I think. He went by the nick-name of Poke Chapman.

Cross-Q. 41. Do you remember any damage that was done by that flood at or about the fulling-mill foot-bridge?

A. No, sir.

Cross-Q. 42. Are you acquainted with the wife of John S. Hamilton, who lives at Fairview township, York county, Pennsylvania?

[*Objected to as not cross-examination.*]

A. I know her.

Cross-Q. 43. You had a conversation with her on last Friday, had you not?

A. I had.

Cross-Q. 44. Did you not, in that conversation, use these words, or words of similar import, to wit: "There is no getting away from the flood of 1873; I saw it myself. The water came up around the buildings, and I remember that it carried away the steps of the foot-bridge?"

A. I spoke about the flood, and, it might be, of the water being around the building, but I am willing to swear that I didn't say it carried away the steps from the foot-bridge.

Cross-Q. 45. Did you use no expression in that conversation to the effect that the flood of 1873 had either carried away the steps to the foot-bridge, or damaged said steps or any part of the foot-bridge?

A. I am sure I didn't.

Re-direct by Mr. Howson:

Q. Q. 46. You have been asked about a conversation with Mrs. John S. Hamilton. Mr. and Mrs. John S. Hamilton appear to have an extraordinary faculty for having conversations with complainants witnesses shortly before they are called to testify in this case; will you please tell us where this talk between you and Mrs. Hamilton occurred, as you have stated?

[The statements of counsel contained in the question objected to as entirely uncalled for, unwarranted by the evidence, and untrue in point of fact.]

Counsel for complainants, in response, simply points to the preceding record.

Counsel for defendants calls attention to the fact that there has been but one conversation with John S. Hamilton alluded to in the taking of this testimony, and that this is the first time the name of Mrs. John S. Hamilton has been introduced into the case.]

A. It occurred between Ross' mill, in New Cumberland, and Jacob Meily's, or on the road going from the mill up to Meily's.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
1st day of May, 1884.

FRED. M. OTT,
Examiner.

H. F. HARRO.

1996 TESTIMONY FOR COMPLAINANTS IN REJOINDER.

JOHN B. SWEENEY, *being produced, sworn, and examined, saith:*

Examined by Mr. Storrow:

My age is 36; I reside in Fairview township, York county, Penna.; I am a farmer.

Q. 1. How near to Elias Hake's mill do you live?

A. It is but a short distance—about three or four hundred yards.

Q. 2. Just across the creek from the mill?

A. Yes, sir.

Q. 3. James Shaffer, of Fairview township; 31 years old; laborer; a witness called for respondents [sur-rebuttal record, page 284;] says that he worked for you a number of years ago; do you know the man?

A. Yes, sir.

Q. 4. He alleges that he worked for you in 1873 from haymaking [Q. 104] until after corn-husking. [Cross-Q. 34.] Did he work for you in 1873 from haymaking through corn-husking?

A. Right along without—no, sir.

Q. 4. Did he ever work for you through a whole summer and fall?

A. No, sir.

Q. 5. If you have got your account-book here, will you point out the dates when he did work for you?

A. The dates that I have that he worked for me is in 1872; I believe that is the first I have any account of [referring to his account-book.]

Q. 6. What month or months in 1872 did he work for you, and what kind of work?

[*Objected to as immaterial and irrelevant.*]

A. My book shows as follows:

"James Shaffer,	1872	
July 2-3-4	To two days at Hay	
July 8-9-10-11.13th	To 4½ days harvesting	Paid
July 19th	To one day cutting oats	
By Cash		11.25

[*Entry objected to, no proper foundation having been laid.*]

On another page:

"James Shaffer	1874	
June 22, 23, 24, 25, 26th	To five Days Haymaking	7.50
24	To Tobacco	.25
July 3d,	To Tobacco	.14
" "	By Cash for repairing cradle	1.75
July 2, 3, 4th	To two and a half days harvesting	3.75
6, 7, 8, 9th	To four Days Harvesting	6.00

DEPOSITION OF JOHN B. SWEENEY.

1997

7th To Tobacco . . . . .	.28	
13th, 14th To $1\frac{1}{2}$ days harvesting		2.25
14th By cash	12.00	
21, 23, 24th To $2\frac{1}{2}$ Days at Oats		3.75
25th To tobacco . . . . .	.28	
30, 31st, To two days loading manure		2.00
Aug. 4th, To $\frac{1}{2}$ day loading manure . . . . .		.75
Cash	7.55	
Aug. 8th By cash	3.75	
	<hr/>	
	26.00	26.00 "

[*Same objection.*]

On another page the following:

" James Shaffer	1875.
Oct. 15th, 1 day Threshing	
Oct. 17, 22nd To 5 days work	
25, 26, To $1\frac{1}{2}$ days threshing	
26 To Husking 25 shock corn at $2\frac{1}{4}$	
23 To " 60 shock	
29 " " 58 "	
30 " " 16 " Settled	
To Bridle . . . . .	.50
To Tobacco . . . . .	.45
Paid in full to date"	

That, I believe, is all I have an account of.

[*Same objection.*]

[*Examiner marks said pages with his name and the date.*]

Q. 7. In whose handwriting are the entries which you have just read about James Shaffer—dated in 1872?

A. In my handwriting, sir.

Q. 8. Were those entries made at or about the time they are dated?

[*Objected to as grossly leading.*]

A. Yes, sir; somewhere near that time; it might have been at the end of the week, still, when he was working.

Q. 9. In whose handwriting are the entries which you have read from your book about James Shaffer, and which are dated in 1874?

A. My handwriting.

Q. 10. Were they made at or about the time they are dated?

[*Objected to as grossly leading.*]

A. Yes, sir.

Q. 11. In whose handwriting are the entries which you have read from your book about James Shaffer, and which are dated in 1875?

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A. In my handwriting.

Q. 12. Were those entries made at or about the time of their dates?

[*Objected to as leading.*]

A. Yes, sir; about the time, or soon after.

Recess until 2, P. M.

Q. 13. Have you met John Hamilton within a few days?

[*Objected to as immaterial and irrelevant.*]

A. Yes, sir; on Saturday.

Q. 14. Was anything mentioned between you about his having been down to Philadelphia last week?

[*Same objection.*]

A. He did speak in reference to it in a joking way; that is, in the start.

Cross-examined by Mr. Church:

Cross-Q. 15. You rely entirely upon your books for the dates at which James Shaffer worked for you, do you not?

A. Almost entirely; yes, sir.

Cross-Q. 16. In answer to the fourth question, in which you were asked in substance whether or not James Shaffer worked for you in 1873, from haymaking until after corn-husking, you said: "Right along, without—no, sir." Did you mean by that form of answer that though he had worked for you in that year, it was not right along without interruption?

A. I meant that he didn't work for me right along day after day.

Cross-Q. 17. Are all the entries in this book which you have produced in your own handwriting?

A. No, sir; I think not, [examining book.] Here are some I can't answer.

Cross-Q. 18. Who, besides yourself, kept this book?

A. My wife done this writing I am looking at, [indicating entries on page 23, headed "Amanda Ringer."]

[*For convenience the Examiner has numbered the pages of the book in red ink, and those numbers will be referred to in indicating the pages.*]

Cross-Q. 19. On page 4 I notice three accounts—one of Christian Short, for the year 1871, another of John Boak, for 1873, and a third of William Diffenderfer, for 1875; and I also notice that the account on the next following page, to wit: that of "John G. Malehorn," is for 1872

and 1873, so far as indicated by year-dates. From this arrangement of the entries, I judge you had no particular system in keeping your book, but entered the accounts at any place without reference to their being arranged consecutively in the order of their dates; am I correct?

[The statement in the preamble of the question objected to, because the account of John G. Malehorn, on page 5, includes part of 1871, as indicated by the year-dates.]

Counsel for complainants is requested to point out the year-date 1871 in the account of John G. Malehorn.

Complainant's counsel points out that the year-date 1872 appears near the bottom of the page, in connection with the month-dates November and December; that above this, in consecutive order, reading them upwards, are the month-dates October, July, June, May, April, March, February, January, December; from which it appears to him that the entries at the top of the page, in the December last mentioned, are thus clearly "indicated" to be in the year 1871.

Counsel for defendants replies that if in reading the months from bottom to top in the order in which he indicates, the word December means anything, it means December, 1870, which is but an additional indication of the want of arrangement in the entries.]

A. I have a system of keeping the book, of course; I always try to have the dates correct.

[Answer objected to by Mr. Church as irresponsible.]

Cross-Q. 20. From the fact that you have entered an account of 1871, then one of 1873, then one of 1875, and then one of 1870, I judge that you were not in the habit of entering the accounts according to their year-dates, but at any blank places in your book, without reference to the dates of entries immediately preceding or succeeding; am I correct?

[Complainants' counsel object to the present statement that the Malehorn account is of 1870, for the same reasons stated in the objection to the previous statement that it was of 1872; and further object to the question that it is an attempt to obtain the assent of the witness to a statement involved and not fully understood, but which may hereafter be interpreted, or attempted to be interpreted, to bear a meaning not present in the mind of the witness when he answers it; question also objected to as ambiguous.]

A. Whenever I had a running account I kept it right along.

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Cross-Q. 21. The account of Christian Short, on page four, is for 1871, is it not?

A. Yes, sir.

Cross-Q. 22. The account of John G. Malehorn, on page five, is for 1872, and at least a year prior to that date, is it not?

A. It runs on back to December, I see.

Cross-Q. 23. And the accounts of John Boak and of William Diffenderfer for 1873 and 1875, respectively, are arranged between the account of Christian Short and the account of John G. Malehorn, are they not?

A. Yes, sir. The reason of that is that Mr. Short and I would have no more dealings, and there was a space here, and I put these two short accounts there. I knew they would be short accounts.

Cross-Q. 24. On pages 18 and 19 I notice the accounts of John S. Weaver, John S. Hamilton, and Maria Crist. That of Weaver is for 1872; that of Hamilton for 1870; and that of Crist for 1872. How happens it that Hamilton's account for 1870 is between the two other accounts for 1872?

A. I can't tell, sir. I put them there, and I know they are correct accounts.

Cross-Q. 25. Please state what page-number you find in black ink on the first page of your book.

A. That is 17.

Cross-Q. 26. Please examine between that first page and the cover, and tell us whether or not you find any evidences of leaves having been torn out there.

A. Yes, sir; I do; I tore them out.

Cross-Q. 27. On page 8, near the bottom, under Samuel W. Stetler's account, I find an entry under date of February 26, 1873. I also find on the upper part of the next page (9) an account of William S. Sweeney for 1871, and a short account of Rife & Sweeny bearing no year date, while the whole lower half of the page has been torn away. How do you account for the absence of the lower half of the last-named page?

A. Well, it is an old book, and I might possibly have torn it away for some white paper. It is an old book, and I never expected to use it again after I had laid it aside.

Re-direct by Mr. Storrow:

Q. Q. 28. A question was put to you on cross-examination which you evidently answered with one understanding while it might be capable of another one. To prevent any doubt about your meaning, I ask you whether you have any recollection of James Shaffer working

for you at any time except at the dates set down in your book, to wit: Hay-making and harvesting in 1872, hay-making, harvesting, and other work in 1874, and threshing and husking in 1875.

[*Objected to as leading.*]

A. My recollection is, not.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
1st day of May, 1884.

FRED. M. OTT,
Examiner.

JOHN P. SWEENEY.

Adjourned until May 2, 1884, at 10, A. M.

MAY 2, 1884, 10, A. M.

Examination resumed.

Present, same counsel.

JACOB E. MUMMA, *being produced, sworn, and examined, saith:*

Examined by Mr. Storrow:

My age is forty-two. I reside at Williams' Mills, Monroe township, Cumberland county, Pennsylvania. I am farming now.

Q. 1. Did you ever live at Liberty Forge on the Yellowbreeches, Lower Allen township; and if so, from what time to what time?

A. I lived at Liberty Forge, in Lower Allen, on the Yellowbreeches. I moved there with my family in April, 1873, and I was there seven years.

Q. 2. Did you have anything to do with the forge there; and if so, what?

A. I was a partner in the forge. Boyer and I had it.

Q. 3. A partner during those whole seven years?

A. Yes, sir.

Q. 4. I believe that at the present time there is a wagon-bridge across the Yellowbreeches at the forge, and no foot-bridge; is that the fact?

A. Yes, sir; that is the fact.

Q. 5. In what year was the wagon-bridge put up and the foot-bridge taken away?

[*This and all other questions relating to the floods and bridges along the Yellowbreeches, and the circumstances thereof, objected to as incompetent evi-*

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dence in rejoinder, the subject having been embraced and the ground covered in the evidence taken by the complainants in their reply.

Complainants' counsel reply that defendants introduced a large amount of evidence cumulative in its character on these topics in their so-called rebuttal, and the testimony of this witness is, moreover, directed to specific statements introduced by the defendants in their so-called sur-rebuttal.]

A. In 1877.

Q. 6. In what part of the year—spring, summer, or fall?

[*Same objection.*]

A. I think it was fall, or the after part of the summer.

Q. 7. State whether or not the foot-bridge over the Yellowbreeches at the forge was ever washed away or carried away, between the time when you went to live there in the spring of 1873 and the time when they began work on the wagon-bridge in 1877.

[*Same objection.*]

A. No, sir; it was never moved while I was there; that is, only it was moved by that other bridge—wagon-bridge.

Q. 8. How was it moved by the wagon-bridge?

[*Same objection.*]

A. The high water moved the new bridge, and took it down the creek, and the new bridge took the foot-bridge with it.

Q. 9. In what year was that?

[*Same objection.*]

A. In 1877.

Cross-examination by Mr. Church, de bene esse:

Cross-Q. 10. How many floods do you recollect having happened along the Yellowbreeches between the years 1872 and 1879?

A. In 1872 I wasn't there, and I don't remember how many floods there were. I recollect one flood, but the waters were pretty high at different times.

Cross-Q. 11. When did that one flood occur, which you say you recollect?

A. I don't recollect the dates. It was before harvest, though, in the fore part of the summer.

Cross-Q. 12. What circumstance fixes that particular flood in your memory?

A. By the men who were driving the teams at the time. I know those who drove at that time and then left me before harvest.

Cross-Q. 13. How are those teamsters associated in your mind with any particular flood?

[Complainants' counsel object to this and other questions upon the same line, upon the ground that they are outside the line of the direct examination, and are an attempt on the part of defendants to introduce cumulative evidence to support their case and that they make the witness the defendants' witness.]

A. I know the men who drove at that time, and I know they couldn't get down to the coaling.

Cross-Q. 14. How are you able to fix the time of year as before harvest, when this flood occurred?

[Same objection.]

A. Well, as I said before, I know the man who drove for me; and one man left before harvest, and I drove the team myself until I got another man.

Cross-Q. 15. Who were the teamsters to whom you have referred?

[Same objection; and further, that the defendants are now attempting to cross-examine their own witness.]

A. Traver was this particular man.

Cross-Q. 16. Who were the other teamsters to whom you have reference?

[Same objection.]

A. Vanarsdale was one; I think that is the way they spelled it.

Cross-Q. 17. Was his name John Vanarsdale?

[Same objection.]

A. Yes, sir; I am not so sure about Vanarsdale's driving just at that time. Traver is the one I have in my mind. I had different ones.

Cross-Q. 18. Do you remember whether that flood, which seems to be impressed upon your mind, did any damage along the Yellow-breeches creek?

[Same objection.]

A. I don't recollect that it did; it didn't do any for us particularly.

Cross-Q. 19. Mr. Charles I. Boyer, your brother-in-law and former partner, has testified (defendants' sur-rebutting record, p. 209,) that

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there was a flood along the Yellowbreeches creek in 1873, and that the rise of water interfered with the melting of pig-iron in the run-out, there being some four or five feet of water "in the fire;" also that his diary contained an entry under date of Thursday, August 14, that John was in the stable; meaning, as he testified, that the six-mule-team was in the stable, John Vanalsdale being the teamster. Is the flood that Mr. Boyer had reference to the one that is fixed in your recollection?

[*Same objection.*]

A. No, sir; that is not the one that I allude to.

Cross-Q. 20. Your memory being refreshed, do you not now remember the flood in regard to which Mr. Boyer testified?

[*Same objection.*]

A. I remember of them kind of waters at different times—being in the forge.

Cross-Q. 21. What year was it that that flood occurred which has left an impression upon your memory?

[*Same objection.*]

A. 1873.

Cross-Q. 22. Am I to understand that you think the flood of 1873 was before harvest?

[*Same objection.*]

A. The one I have reference to was.

Cross-Q. 23. Was there more than one flood in that year?

[*Same objection.*]

A. There may have been, but I don't recollect it.

Cross-Q. 24. How long after the foot-bridge was carried away was the wagon-bridge put up?

[*Objected to for the reason that it has already been fully answered.*]

A. The wagon-bridge was brought back and put up at once.

Cross-Q. 25. Do I understand, then, that the foot-bridge was carried away in 1877?

[*Same objection.*]

A. The same year that the wagon-bridge was put up.

Cross-Q. 26. How do you fix 1877 as the date when the foot-bridge was carried away?

[*Same objection.*]

A. Why, it was the same year that the wagon-bridge was put up.

Cross-Q. 27. How are you able to say that the wagon-bridge was put up in 1877?

A. The date is on the bridge.

Cross-Q. 28. Is the month-date on the bridge?

A. I think not.

Cross-Q. How recently have you examined the date on the bridge?

A. Not recently.

Cross-Q. 30. When did you last look at it?

A. I don't know. It may be a year ago.

Cross-Q. 31. May it not have been two or three years ago?

A. I think, not so long as that.

Cross-Q. 32. Are you positive that the foot-bridge was carried away the same year the wagon-bridge was put up?

A. Yes, sir.

Cross-Q. 33. Which side of the creek did you live on in 1877?

A. On the Cumberland side.

Cross-Q. 34. Did you live at the same place in 1873?

A. Yes, sir.

Cross-Q. 35. On which side was the forge?

A. The same side.

Cross-Q. 36. In going back and forth between your house and the forge you didn't have to cross the Yellowbreeches creek, did you?

A. No, sir.

Cross-Q. 37. What was your post-office address in 1873?

A. Lisburn.

Cross-Q. 38. You didn't have to cross the creek to go there, did you?

A. No, sir.

Cross-Q. 39. Where did you go to get your household supplies?

A. To Lisburn principally.

Cross-Q. 40. Do you remember whether or not the foot-bridge about which you have been testifying was carried away by an ice flood in 1875?

A. No, sir.

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Cross-Q. 41. When you lived there, near Lisburn, did you keep a horse and buggy?

A. Yes, sir.

Cross-Q. 42. When you drove over the Yellowbreeches creek, where did you usually cross?

A. At Lisburn, oftener than at any other place.

Cross-Q. 43. You mean that you went across the wagon-bridge at Lisburn, I suppose?

A. Yes, sir.

Cross-Q. 44. How far from the wagon-bridge at Lisburn was the foot-bridge about which you have testified?

A. I suppose, about a mile.

Cross-Q. 45. Independently of the date on the wagon-bridge, concerning which you have testified, have you any recollection of the year when the foot-bridge was carried away?

A. Independent from that date? No, sir.

Cross-Q. 46. Do you know anything about what was known as the watermelon flood?

[*Same objection as to question 13.*]

A. No, sir; I don't know anything about it.

Cross-Q. 47. Do you know George Sipe?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 48. Did he ever work for you in a coaling for the Lisburn forge?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 49. Do you remember of his leaving your employ for the purpose of attending a melon-patch on Kunkel's island, near Lisburn?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 50. When was that?

[*Same objection.*]

A. I can't give the year—not now I can't.

Cross-Q. 51. Do you remember the fact of a flood on the Yellowbreeches having carried away melons from that patch?

[*Same objection.*]

A. I do not.

Cross-Q. 52. Have you any recollection of any ice-flood along the Yellowbreeches creek while you lived there?

A. No, sir; not to amount to anything.

Re-direct by Mr. Storrow:

Q. Q. 53. You have referred to the carrying away of the Liberty Forge foot-bridge in 1877 in connection with the building of a wagon-bridge at that place. Was that carrying away of the foot-bridge before they began to build the wagon-bridge, or while they were building it, or after it was completed and thrown open to travel?

[*Objected to as not proper re-direct examination.*]

A. While they were building it.

Q. Q. 54. Did the building of the wagon-bridge have anything to do with the carrying away of the foot-bridge; and if so, what?

[*Same objection.*]

A. The wagon-bridge was taken down stream and it took the foot-bridge with it.

Q. Q. 55. Do you remember how far along the work on the wagon-bridge was at that time?

[*Same objection.*]

A. Putting in the—arch I suppose you call it—the wooden arch.

Q. Q. 56. I understand you to have testified that the foot-bridge at the forge was never carried away while you lived there until the wagon-bridge knocked it down. How sure are you of that fact?

[*Same objection, and also because leading and as assuming what the witness has not testified to.*]

A. Well, it was there all the time I lived there.

Q. Q. 57. Your 40th cross-interrogatory and answer can be interpreted in two ways, and I, therefore, ask the Examiner to read it to you, and then I ask you whether you mean that the foot-bridge was not carried away in 1875, or whether you mean that you don't know whether it was or not.

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[*Objected to as not proper re-direct, and as leading in its character.*]

A. I mean that it was not.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
2d day of May, 1884.

FRED. M. OTT,
Examiner.

JACOB E. MUMMA.

Recess until 2, P. M.

Mrs. MARTHA M. BOWMAN, *being produced, sworn, and examined, saith :*

Examined by Mr. Storrow :

Q. 1. Are you the wife of Mr. Cyrus Bowman, of Mongul, who testified for the complainants something more than a year ago at Philadelphia? (See complainants' printed record, page 666.)

A. Yes, sir.

Q. 2. Are you the sister of Mr. J. Porter Harris, of Harrisburg, upholsterer, (see defendants' sur-rebuttal record p. 465,) and of Mrs. Margaret Sweigert, of Tyrone (defendants' sur-rebuttal, p. 869)?

A. Yes, sir.

Q. 3. It has appeared that you and your husband lived at Eberly's Mills from April 1, 1874, to March 1, 1876. While you lived there did you know Daniel Drawbaugh?

[*Objected to as calling for evidence not proper in rejoinder.*]

A. Yes, sir.

Q. 4. While you lived there did you ever hear that Drawbaugh had a talking-machine?

[*Same objection, and further, as calling for hearsay testimony.*]

A. No, sir.

Q. 5. Since your husband testified at Philadelphia, has Mr. Henry F. Drawbaugh, Daniel Drawbaugh's brother, been to see you and your husband at Mongul?

[*Objection to question 3 repeated, and further objected to as incompetent and immaterial.*]

A. Yes, sir.

Q. 4. How many times?

[*Same objection.*]

A. Twice.

Q. 7. When was it that he came the first time?

[*Same objection.*]

A. About the middle of November, as near as I can recollect.

Q. 8. Did he say anything to you, or ask you any question about Daniel Drawbaugh, or about a talking-machine; and if so, what passed between you on the subject?

[*Same objection, and further because leading.*]

A. Yes, sir; he asked me about the talking-machine, and I told him I knew nothing about it.

Q. 9. Did he say anything about coming to see you again about it; and if so, what?

[*Last objections repeated.*]

A. Yes, sir; he did. He said I should study over it, and perhaps I could mind something of it, and tell him when he would come again.

Q. 10. Did he come again, and about when was it that he came a second time?

[*Same objection.*]

A. He came about the middle of December—the 14th, I think it was that he was there.

Q. 11. Did he say anything to you then about Daniel Drawbaugh, or about a talking-machine; and if so, what passed between you about it?

[*Same objection.*]

A. He just asked if I could remember anything about it, and I told him I couldn't.

Cross-Q. 12. Did he come into the house on that visit?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 13. Did he, in your presence, ask either of your children about a talking-machine; and if so, what did he ask, and what did the child say in reply?

[*Same objection, and as calling for hearsay.*]

A. Well, he just asked whether they knew anything about it, and I told him the two youngest ones were rather young, but the oldest one, maybe, could remember. She told her father that she was down at the

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shop and heard the talking-machine. He asked her how it went, and she said it ticked ; and Mr. Drawbaugh said that was the clock.

Cross-Q. 14. This child who had this conversation on Mr. Drawbaugh's visit last winter has some trouble which renders her unable to walk out of doors, has she not ?

[Same objection as to question 8.]

A. Yes, sir.

Cross-Q. 15. While you lived at Eberly's Mills you lost two daughters that were pretty well grown up, and were also invalids, did you not ?

A. Yes, sir.

Cross-Q. 16. Whilst you lived at Eberly's Mills did your children use to speak of Drawbaugh's electric clock in the family ?

[Objected to as immaterial, irrelevant, and not calling for evidence proper in rejoinder.]

A. Yes, sir.

Q. 17. Whilst you lived at Eberly's Mills did you ever hear your children speak of a talking-machine ?

[Same objection, and because seeking to show, on the part of the witness, mere absence of knowledge which she could not necessarily be expected to have, and which she might have had, and forgotten.]

The preceding argument objected to by complainants as unfounded in fact and illogical in its attempted conclusion.]

A. No, sir.

[The whole deposition objected to for the reasons above given, and cross-examination, de bene esse, by Mr. Jacobs.]

Cross-Q. 18. How many children have you ?

A. Three.

Cross-Q. 19. Will you give me their respective names and ages ?

A. Ada G., twenty-two ; Ella M., seventeen ; Carrie E., fifteen.

Cross-Q. 20. The first mentioned, I suppose, is the one who, as you say, told Mr. Henry F. Drawbaugh that she had heard the talking-machine down at the shop ; is that correct ?

A. She told her father, and her father told Mr. Drawbaugh.

Cross-Q. 21. This, then, was not said by her to Mr. Drawbaugh at all, so far as you know, was it ?

A. It was told to her father, and he told it. Mr. Drawbaugh was present when she told it to him.

Cross-Q. 22. How did it come that her father told Mr. Drawbaugh what she said, if Mr. Drawbaugh himself was present at the time she said it?

A. Mr. Drawbaugh asked her and she was too backward, and then he went out, and then she told her father, and when he came in to dinner, then her father told it.

Cross-Q. 23. Then Mr. Drawbaugh was not present when she told her father about being down at the shop and having seen the talking-machine?

A. No, sir.

Cross-Q. 24. Mr. Drawbaugh tried to engage her in conversation and find out from her what she knew about the talking-machine, but she would not engage in conversation with him; are those not the facts?

A. Yes, sir.

Cross-Q. 25. She was sick at the time, was she not?

A. She wasn't sick; she had the toothache; she is an invalid, too.

Cross-Q. 26. How long has she been an invalid?

A. It has been coming on her gradually since she was about ten years old.

Cross-Q. 27. The trouble began, then, did it, before you moved away from Eberly's Mills?

A. Yes, sir.

Cross-Q. 28. And before you moved there?

A. Yes, sir; before we moved there it commenced.

Cross-Q. 29. How many children had you when you moved to Eberly's Mills?

A. Five.

Cross-Q. 30. Will you please give me the names and ages of the two who died whilst you lived there?

A. Sadie Bell, age sixteen years, eight months, died 1874, December 24; Annie W., born 1860, and died in December, and she was fourteen in March; she died on the 26th of the same month—December—of the same year. They were just two days apart.

Cross-Q. 31. They were buried on the same day, at Newville, Pennsylvania, were they not?

A. Yes, sir.

Cross-Q. 32. Are not these the facts with regard to the two interviews which you say that Henry F. Drawbaugh had with you in

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November and December, 1883, namely: That when he first asked you whether you knew anything about his brother Daniel's talking-machine, you stated that you had not seen it, but had heard it talked about among the neighbors and by your children; and that, when he came the second time, you told him you had been mistaken; that it was the clock you had heard talked about, and not the talking machine?

A. No, sir; I never said that. I knew nothing about it; nor the children either.

[*The last part of the answer objected to by Mr. Jacobs as irresponsible and volunteered.*]

Cross-Q. 33. Between the time when Henry F. Drawbaugh was to see you first, and the time of his second visit, your husband was sent for to go to the Bolton House, at Harrisburg, was he not?

A. Yes, sir.

Cross-Q. 34. Who sent for him?

A. That I can't tell; there was a subpoena came for him, but I don't know who sent for him. That I can't answer you.

Cross-Q. 35. Are you sure it was a subpoena, or was it only a letter or a telegram, or some message of that kind?

A. I can't tell. The squire in Shippensburg came for him, Mr. Kenyon; it was late in the evening when he came.

Cross-Q. 36. He went to Harrisburg in response to that summons, whatever its character was, I suppose, did he not?

A. Yes, sir.

Cross-Q. 37. When was that?

A. That I can't tell. I think it was the latter part of January. That I don't know; I forget.

[*Complainants' counsel states that he will inform the defendants that it was on the 6th or 7th day of December—the day after or next but one after Mr. J. Porter Harris testified, and that no subpoena was sent, but either a letter or a telegram—Complainants counsel thinks, the latter.*]

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
2d day of May, 1884.

FRED. M. OTT,
Examiner.

MARTHA M. BOWMAN.

CYRUS BOWMAN, *being produced, sworn and examined, saith :*

Examined by Mr. Storrow:

Q. 1. Are you the same Cyrus Bowman who testified for the complainants last year at Philadelphia (see complainants' proofs, page 666 ?)

A. Yes, sir.

Q. 2. While you lived at Eberly's Mills was there any talk in your family by your wife, or either of your children then living, or yourself, about Daniel Drawbaugh's having a talking-machine ?

[Objected to because not calling for evidence proper in rejoinder, but merely seeking to get the witness to reiterate statements made by him in his former deposition, after those statements have been contradicted by other witnesses; and also because calling for matters not within his knowledge.]

A. No, sir.

Q. 3. While you lived at Eberly's Mills did you ever talk to Mr. J. Porter Harris, or hear your wife or children talk to Mr. J. Porter Harris, about Mr. Drawbaugh's having a talking-machine ?

[Objected to because not calling for evidence proper in rejoinder, but merely seeking to get the witness to reiterate statements made by him in his former deposition, after those statements have been contradicted by other witnesses; and also because calling for matters not within his knowledge.]

A. No, sir; I didn't.

Q. 4. While you lived at Eberly's Mills did you ever talk to Mrs. Margaret Sweigert, or hear your wife or children talk to her, to the effect that Drawbaugh had a talking-machine ?

[Same objection.]

A. No, sir; I did not.

[Deposition objected to for the reasons above given.]

Cross-examination declined.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
2d day of May, 1884.

FRED. M. OTT.

Examiner.

CYRUS BOWMAN.

Adjourned till May 3, 1884, 10, A. M.

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MAY 3, 1884, 10, A. M.

Examination resumed.

Present, same counsel.

JOHN GREENFIELD, *being produced, sworn, and examined, saith:*

Examined by Mr. Storrow:

My age is thirty-nine. I reside in Fairview township, York county, Pennsylvania. I am a laborer.

Q. 1. Have you been in the habit of doing carpenter's work somewhat for a dozen or fifteen years past?

A. I have.

Q. 2. Where did you work in 1872 and 1873?

A. Pennsylvania Steel-Works, at Steelton, a few miles below Harrisburg, Pennsylvania.

Q. 3. When did you go to work there, and when did you quit there?

A. I went to work there in December, 1871, and quit there in September, 1873.

Q. 4. Why did you quit?

A. On account of a reduction in the wages.

Q. 5. Was there a general reduction at that time, or what was the occasion for it?

A. There was a general reduction—on account of the hard times, I suppose.

Q. 6. Was that the time of the panic?

A. Yes, sir.

Q. 7. When were you married?

A. I was married in October, 1874.

Q. 8. Between quitting the steel-works in September, 1873, and your marriage in October, 1874, where did you live and have your home?

A. With my mother, in Fairview township, York county.

Q. 9. What kind of work did you do during the season of 1874?

A. Worked on a farm.

Q. 10. Whose farm?

A. On different ones.

Q. 11. If there was any particular farm that you worked on more than another, will you state whose it was?

A. I worked for Mr. Hoff.

Q. 12. Do you know two foot-bridges across the Yellowbreeches at Lower Allen township, the upper one of which, called the fulling-mill

bridge, is at Zinn's fulling-mill, and the lower one of which, commonly called "Zinn's bridge," is at the mill generally known as "Zinn's clover-mill?"

[This and all other questions relating to the floods and bridges upon the Yellowbreeches creek, and the circumstances thereof, objected to as improper and incompetent evidence in rejoinder, the subject having been embraced and the ground covered in the evidence taken by complainants in their reply; and the protest entered with the like objection to question 21 in the deposition of William Ross is here repeated.]

Complainants' counsel reply that the defendants introduced a large amount of evidence cumulative in its character on their topics in their so-called sur-rebuttal, and the testing of this witness is, moreover, directed to specific statements, introduced by the defendants in their so-called sur-rebuttal.]

A. Yes, sir.

Q. 13. Did you do any work on either of those bridges before you went to work at Steelton in December, 1871; and if so, on which one?

[Same objection, and also because irrelevant and immaterial.]

A. At Zinn's fulling-mill.

Q. 14. What was the kind of work that you did then? What was the matter with that bridge?

[Same objection.]

A. The bridge was down and I helped to put it up.

Q. 15. What year was that in?

[Same objection.]

A. 1871.

Q. 16. Who was the boss carpenter?

[Same objection.]

A. David Smith.

Q. 17. Did you do any work on either of those bridges after you quit at Steelton, September, 1873?

[Same objection as to question 12.]

A. I did.

Q. 18. On which bridge, and what was the kind of work?

[Same objection.]

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A. The bridge at Zinn's clover-mill. I helped to put that bridge up.

Q. 19. In what year was that?

[*Same objection.*]

A. 1875.

Q. 20. Who was the boss carpenter on that job?

[*Same objection.*]

A. David Smith.

Q. 21. If either supervisor was present during any part of that job, state who he was.

[*Same objection.*]

A. Daniel Weaver.

Q. 22. Where were you living at the time you worked on that job?

[*Same objection.*]

A. In Samuel Hale's house.

Q. 23. Were you married then or not?

[*Same objection.*]

A. I was.

Q. 24. Had you lived in Samuel Hale's house before you were married or not?

[*Same objection.*]

A. I hadn't.

Q. 25. Who worked on that job of rebuilding the bridge at Zinn's clover-mill in 1875, which you have testified about?

[*Same objection.*]

A. David Smith, myself, John Umberger, William Umberger, Louis Umberger, Isaac Gray, James Shaffer; and John McAllister was there; I am not so positive about his helping, but he was there at the bridge.

Q. 26. Do you know whether James Shaffer was working for anybody at the time; and if so, for whom?

[*Same objection.*]

A. He was working for Adam Henry Zinn at the time.

Q. 27. How do you know that?

[*Same objection.*]

A. I saw him plowing corn.

Q. 28. Where did you see him plowing corn at that time?

[*Same objection.*]

A. In Adam Henry Zinn's field, close by the place that I was working at.

Q. 29. If there was any incident took place there in which you and Shaffer were concerned, please state it.

[*Same objection.*]

A. We had a wrestle.

Q. 30. Was there any incident in which you and Isaac Gray were concerned?—if so, please state it.

[*Same objection, and as leading.*]

A. Isaac Gray told me that he didn't want to get wet, and I threw him off of the wagon into the creek.

Q. 31. How many spans are there to the Zinn bridge over the creek, and about how long is the bridge?

[*Objection to Question 12 repeated, and objected to further as calling for guess-work.*]

A. There are three spans, and the bridge is about a hundred and twenty feet long as near as I can come.

Cross-examined, de bene esse, by Mr. Church:

Cross-Q. 33. You have stated that you went to work at Steelton in December, 1871, and continued working there till September, 1873; how do you fix those dates?

A. Well, sir, I am satisfied that I went there in December, 1871, from this reason: In the spring of 1871 I worked for John G. Malehorn, and hauled a flitting for my brother, Jacob Greenfield; then that fall I went to the steel-works. I am satisfied that it was in December, because it was very cold weather, and I drew no pay till January. I fix the date of September, 1873, on account of the panic of 1873.

Cross-Q. 34. For whom, beside John G. Malehorn and your brother, did you work in 1871?

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A. I worked some for Mr. Hale, and helped David Smith put up a bridge at Zinn's fulling-mill.

Cross-Q. 35. Is that all you can remember?

A. It is all I remember of now, until I went to the steel-works; I worked wherever I could get work that summer.

Cross-Q. 36. How long did you work for Malehorn?

A. Something over two months.

Cross-Q. 37. And how long for your brother?

A. One day.

Cross-Q. 38. When did you quit working for Malehorn?

A. Sometime toward the latter end of May.

Cross-Q. 39. About how long were you employed by David Smith in 1871?

A. I wasn't employed by him any more than to help put up that bridge. I couldn't say.

Cross-Q. 40. I judge from your testimony that you were unemployed, then, for a large portion of 1871; is that the fact?

A. I didn't say so.

Cross-Q. 41. What were you doing at the times when you were not employed by your brother, or David Smith, or at the steel-works, in 1871?

A. I can't tell you what all I was doing in that time.

Cross-Q. 42. Were you doing any farm-work during that portion of 1871, which, according to your testimony, remains unaccounted for?

[*This whole line of interrogation objected to as upon matters immaterial, this objection to apply to past and future interrogatories of the same character.*]

A. I was. If I worked at all, I was working on a farm.

Cross-Q. 43. Do you remember for whom you worked doing farm-work in 1871?

A. I worked for Samuel Hale. I worked for Malehorn in the spring of 1871.

Cross-Q. 44. How long did you work for Samuel Hale?

A. I can't tell you, sir.

Cross-Q. 45. Give your best recollection.

A. Well, I really couldn't say how many days. I worked for him by the day, and I have no account of it, and I couldn't say.

Cross-Q. 46. Do you recollect having worked for John P. Sweeney in 1871?

A. I may have done work for him when I was at Malehorn's. I don't recollect.

Cross-Q. 47. Do you remember ever working for John P. Sweeney for a period of about seven months at something like nine or ten dollars a month?

A. I never worked for him a single day, unless Malehorn sent me there to do a day's work; that is, when I was living at Malehorn's he may have sent me.

Cross-Q. 48. What is your middle name?

A. H. I calculate it to stand for Hart. It was merely put in on account of there being another man of the same name.

Cross-Q. 49. What kind of work did you do at the steel-works while you were employed there?

A. The first month I was there I worked in the yard, then I run a buggy, and from that I was helping at a heating-furnace.

Cross-Q. 50. Where did you live when you worked at the steel-works?

A. I had my home with my mother.

Cross-Q. 51. Where was that?

A. Fairview township, York county.

Cross-Q. 52. Did you do any work for David Smith in 1872?

A. No, sir.

Cross-Q. 53. When Smith employed you, what sort of work did you usually do?

A. Carpenter work.

Cross-Q. 54. Is the other John Greenfield, to whom you have alluded, a carpenter?

A. Not that I know of.

Cross-Q. 55. What does he work at?

A. I don't know, sir.

Cross-Q. 56. Are you acquainted with him?

A. I am.

Cross-Q. 57. Has he any trade?

A. I don't know, sir.

Cross-Q. 58. What is this other John Greenfield's middle name, if he has one?

A. John Calvin.

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Cross-Q. 59. He is usually employed as a farm hand, is he not?

A. He was when he was about in our part of the county.

Cross-Q. 60. Was he around in your part of the county in 1871 and 1872?

A. He was, in 1871 and 1872.

Cross-Q. 61. You have testified that you worked for David Smith in 1871 on the bridge at Zinn's fulling-mill, and again, in 1875, on the bridge at Zinn's clover-mill. On what other job did you work for David Smith between 1871 and 1875?

A. I don't know as I worked any for him in that time.

Cross-Q. 62. Did you not help David Smith to repair the fulling-mill bridge in 1875?

A. I did not, to the best of my recollection.

Cross-Q. 63. Was your father living in 1872?

A. No, sir.

Cross-Q. 64. Did you do any work for David Smith, other than carpenter work, between 1871 and 1875?

A. I do not know, sir.

Cross-Q. 65. When David Smith was called as a witness for complainants in this cause he produced a book in which the following account appears. [*The Examiner copies from the first page of the dark-covered book of David Smith.*

"for 1872

In Act with John Greenfield

	Charged \$ cts.	Credit \$ cts.
Jan. 2 to one butchering	1.00	
2 By cash		1.00
To 1 picture frame	2.00	
By Cash 200		2.00
By shoeing horse	1.15	
to 1 day at shutters		1.00"

The first two items, to wit: "Jan. 2 to one butchering, 1.00" and "2 By cash 1.00," are cancelled by drawing a pen through them. The word "John" in the head-line is written over something which the Examiner thinks was "Mrs." but is not certain about.] Are you the John Greenfield referred to in that account?

A. I suppose I am.

Cross-Q. 66. What work was it that was done at shutters?

[This and the preceding question objected to because the entries should have been shown to the witness, or his attention called to the particular matter referred to, before the general cross-examination as to the work he did for Smith and others, said cross-examination being upon matters immaterial to this case, and incompetent, except for the purpose of testing the witness' memory.]

A. Putting shutters on Hursh's school-house.

Cross-Q. 67. Then, as a matter of fact, you did do some work for David Smith in 1872, did you not?

[Objected to for the reason that the account does not state or tend to show when the work was done.

Counsel for respondents reply that the account is expressed on its face to be for 1872.

Complainants' counsel reply that its beginning is expressed to be for 1872.]

A. Not that I know of.

Cross-Q. 68. What time of year was the work done on those shutters?

A. I do not know.

Cross-Q. 69. Was it cold, or warm weather?

A. I do not know, sir.

Cross-Q. 70. How is it that you were able to say so promptly that that entry about shutters meant putting shutters on Hursh's school-house?

A. It just happened to come into my memory. I never helped him to put shutters on, to the best of my knowledge, at any other place.

Cross-Q. 71. Without reference to the year in which it was done, please state what time of you worked on shutters for the school-house.

A. I do not know.

Cross-Q. 72. Did you do the work in-doors, or out-doors?

A. The work wasn't done in the school-house.

Cross-Q. 73. Where was it done?

A. The shutters were made at Josiah McDaniel's, near by the school-house.

Cross-Q. 74. Did you do the work at a time when you had a day off at Steelton?

A. I don't know, sir.

Cross-Q. 75. You remember doing the work, though?

A. I do.

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Cross-Q. 76. But can't tell when, nor what time of the year it was?

A. No, sir.

Cross-Q. 77. Do you personally know James Shaffer?

A. I do, sir.

Cross-Q. 78. Do you know where he worked in 1873?

A. I do not.

Cross-Q. 79. Which span of the bridge was it that was repaired in 1875, as you have testified?

[The assumption contained in the question objected to as without foundation in the testimony.]

The objection was first stated on the ground that it was directly contrary to the witness' testimony, but before it was written down counsel changed the expression.

Counsel for defendants objects to the objection as an unwarranted interference with the cross-examination.]

A. The whole bridge was down, and we put it up from the ground.

Cross-Q. 80. What part of the work did you do?

A. I helped frame the trestles—to raise it, and helped to finish it.

Cross-Q. 81. Did you ever see the clover-mill bridge down before that time?

A. I don't know, sir.

Cross-Q. 82. Do you know the cause of that bridge being down at the time you saw it?

A. I do not.

Cross-Q. 83. Have you any idea what the cause was of its being down?

A. I don't know, sir, what put it down.

Cross-Q. 84. Did you often see foot-bridges down along that stream?

A. Not very often.

Cross-Q. 85. What usually carried them down?

A. I have heard of them going by water, and ice, and heard of one being blown down.

Recess until 2.30, P. M.

Cross-Q. 86. Do you remember who the supervisor was, on the York side of the clover-mill bridge, in 1873?

A. I do not know.

Cross-Q. 87. Who is the present supervisor on the York side?

A. Adam Becker. I think that is the way he spells his name, but am not positive. I know the man very well.

Cross-Q. 88. Have you ever, before to-day, seen the account-book of David Smith, shown you this morning?

A. I saw the book.

Cross-Q. 89. When?

A. The 22d of April. I didn't see the book open—just saw the book lying in a drawer. I opened the drawer to put my overcoat in, and saw these books lying there—said to Smith that some one had left some books in that drawer. He said they were his.

Cross-Q. 90. Did Smith or any one else tell you what the books contained?

A. He said it was his book-account.

Cross-Q. 91. Did he tell you that it contained an account of the work done on the Zinn clover-mill bridge in 1875?

A. He did not.

Cross-Q. 92. Did he or any one else say in your hearing that the books, or either of them, contained any mention of repairs to either of the Zinn bridges?

A. He told me that he (Smith) had a book-account of putting up them bridges.

Cross-Q. 93. Did he tell you of the names of the persons, or any of them, who helped at that job on the clover-mill bridge, about which you have testified?

A. No, sir.

Cross-Q. 94. Have you read any of the testimony given in this case concerning the repairs to the clover-mill bridge at Zinn's?

A. I did—James Shaffer's.

Cross-Q. 95. At whose request did you read that?

A. No one requested me to read that, sir.

Cross-Q. 96. Who furnished you the copy of it?

A. It was lying on the table in room 500 in this hotel. I was sitting in there, picked the book up, and saw this testimony—or the testimony of James Shaffer.

Cross-Q. 97. Did any one tell you that the testimony of James Shaeffer was in that book?

A. No, sir.

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Cross-Q. 98. Have you read any testimony in this case except that given by James Shaffer?

A. I seen different testimony there.

Cross-Q. 99. Have you read any part of the testimony given in this cause by David Smith, or has any one told you that David Smith has testified, or would testify?

A. I have not read any of his testimony. No one has told me what he testified to, or would testify to.

Cross-Q. 100. Same question as to William Umberger.

A. I have not read any of his testimony. No one told me what he had testified to, or what he would testify to.

Cross-Q. 101. Same question as to Daniel Weaver.

A. No, sir—to the whole question.

Cross-Q. 102. Same question as to Adam Henry Zinn.

A. No, sir.

Cross-Q. 103. Have you had any talk with any of the persons mentioned in your deposition, about what they remembered about the repairing of the clover-mill bridge at Zinn's?

A. I had a talk with Isaac Gray.

Cross-Q. 104. Any one else?

A. I had a talk with John Umberger.

Cross-Q. 105. Any one else?

A. No, sir.

Cross-Q. 106. How came you to talk with John Umberger about it?

A. I passed his place last Saturday. He asked me whether I was through here giving in my evidence. I told him, not. I told him I thought he might be called on, too. He said he didn't want to come here. I told him I didn't either, and told him he helped to put up the bridge. He said if he had to come he remembered the time it was put up.

Cross-Q. 107. Were the names of the various persons who took part in the rebuilding of the clover-mill bridge mentioned on the occasion of this interview?

A. Isaac Gray's was mentioned.

Cross-Q. 108. Who else?

A. John McAllister.

Cross-Q. 109. Give the names of any others who were mentioned.

A. James Shaffer's. That is all that I remember of.

Cross-Q. 110. Who first came to see you about this bridge matter?

A. John Comfort.

Cross-Q. 111. What did he say to you?

A. He asked me whether I had ever helped to put up any bridges along the creek.

Cross-Q. 112. Did he mention any dates?

A. No, sir.

Cross-Q. 113. When was it he came to see you?

A. In March, 1884.

Cross-Q. 114. Did he come more than once; if so, how many times?

A. Once.

Cross-Q. 115. How often have you been down here to Philadelphia during the progress of this case?

A. This is the second time.

Cross-Q. 116. Who came down with you the first time?

A. David Smith, William Umberger, Adam Henry Zinn, Isaac Becker.

Cross-Q. 117. When did you first come down here?

A. The 22d of April, 1884.

Cross-Q. 118. When did you come down the second time?

A. The 2d of May, 1884—yesterday.

Cross-Q. 119. Who came down with you?

A. William Hart.

Cross-Q. 120. Any one else?

A. No, sir.

Re-direct by Mr. Storrow:

Q. Q. 121. Has Mr. Hart anything to do with this case, or is he merely a friend of yours whom you happened to meet on the way?

Objected to because calling for guess-work, as the witness cannot know whether or not Mr. Hart has anything to do with this case.]

A. Mr. Hart is a first cousin of mine. I met him in Harrisburg, and asked him to come along with me down, and spend a day with me, and he came along down.

Q. Q. 122. You say that you came here on the 22d, which is Tuesday of last week; on what day did you go home, and why?

A. I started to go home the night of the 25th. I was not well.

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Q. Q. 123. While you worked at Steelton whereabouts did you board ?

A. The winter of 1871 I boarded with Jacob Hale in Steelton. The summer of 1872 I boarded with Jacob Greenfield, near New Cumberland, Cumberland county, just across the river from Steelton. The winter of 1872 and summer of 1873 I boarded with Eli Dietz, about one mile from the steel-works, where I worked.

Q. Q. 124. You stated that you talked with Isaac Gray about some matters connected with bridges ; about when was that ?

A. I talked with him sometime last winter.

Q. Q. 125. Was it after he testified for the defendants—did he refer to having testified ?

[*Objected to as not proper re-direct examination.*]

A. I do not know, sir.

Q. Q. 126. Was it before Mr. Comfort came to see you ?

A. Yes, sir.

Q. Q. 127. What was said between you and Mr. Gray about any work on the clover-mill bridge, or about anything that happened during the work there ?

[*Objected to as not proper re-direct examination, the witness not having been asked on cross-examination to give any conversations that occurred between himself and any one but John Comfort ; and also objected to as calling for hearsay.*]

Complainants' counsel refer to cross-question 103.]

A. He asked me whether I had been subpoenaed for telephone company. I told him I had not. I said I didn't know anything about the telephone. He said I knowed something about putting up a bridge at Zinn's mill. I told him that I thought he did, too, if he remembered rightly. He said he didn't know anything about it. I told him I could tell him a circumstance that I thought would bring it to his memory. I asked him whether he didn't remember of me throwing him into the creek. He laughed, and said : " That was about 1875."

[*Entire answer objected to by the counsel for the defendants as not evidence for any purpose whatever.*]

Q. Q. 128. Isaac Gray testified for the defendants November 19th, last, (see their sur-rebuttal record, page 310,) do you remember whether

the talk you had with him was before the 19th of November, or later in the season than that?

[*Objected to as calling for mere guess-work.*]

A. I do not.

Re-cross by Mr. Jacobs:

Re-cross-Q. 129. If, while working at Steelton, you boarded with the various persons named in your 123d answer, why did you say in your 50th answer that you had your home with your mother when you worked at the steel-works?

A. I went home nearly every Saturday and staid with her over Sunday, and considered that my home until I was married and went to housekeeping.

Re-cross-Q. 130. From December, 1871, to September 1873, you were at your mother's house at other times than over Sunday, were you not?

A. I was if I was unwell, or the mill would stop.

Re-cross-Q. 131. And, I suppose, the mill stopped more than once during that period, did it not?

A. I don't know, sir.

Re-cross-Q. 132. Do you mean to say that you don't know how often it stopped?

A. That is what I mean.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
3d day of May, 1884.

JOHN GREENFIELD.

FRED. M. OTT,
Examiner.

THOMAS R. DAVIS, *being produced, sworn, and examined, saith:*

I am the same Thomas R. Davis who heretofore testified in this case, (see page 1192 complainants' printed record,) and am auditor of disbursements of the Pennsylvania Railroad Company.

Q. 1. Have you with you the book of check-rolls showing the laborers in the employ of said company on maintenance of way for the month of September, 1878?

A. I have, of the Pennsylvania railroad division.

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Q. 2. Will you please refer to the check-rolls of that month for the middle division, and say whether or not you find there the name of J. C. Zimmerman as a laborer on that division during said month; and if yes, say on what days during the month he appears to have been at work, and on what days, if any, to have been at work during a part of a day only?

[*Objected to as immaterial, irrelevant, and not proper evidence in rejoinder.*]

A. I find the name of J. C. Zimmerman on the check-roll for the month of September, 1878. On the 1st and 2d he appears to have made full days; also on the 6th, 7th, 8th, and 9th; also on the 14th, 15th, and 16th; also on the 18th, 19th, 20th, and 21st; also on the 23d and 24th; on the 25th he worked but half a day; on the 26th, 27th, and 28th he worked full days, and also on the 30th. His name does not appear on the 3d, 4th, 5th, 10th, 11th, 12th, 13th, and 17th.

Q. 3. Have you with you the books of check-rolls belonging to the maintenance-of-way department, and for the same division, and for the period between the month of September, 1878, and the month of December, 1879, both inclusive?

A. I have.

Q. 4. Have you or not carefully examined all these books to find the name of one Edward Crist, as a laborer on said division; if yes, say on what check-roll you find his name first to appear?

A. I find his name to appear for the first time January 15, 1879. I find "Ed"—presumably for Edward—and "Christ." He is down for one day, and worked eleven hours, for which he received \$1.10. He was employed at removing snow and ice.

Q. 5. When next do you find the name of Edward Crist, or E. Crist, on said check-rolls?

A. I find Edward Crist's name on check-roll No. 1432, July, 1879; that he worked one hundred and ten hours at ten cents per hour, beginning on the 18th, and working till the end of the month.

Cross-examined by Mr. Jacobs:

Cross-Q. 6. I observe upon the check-roll first produced by you, opposite the name of J. C. Zimmerman, and under each of the dates given by you in your second answer, the figure "10," except under the 25th,

where the figure "5" appears; will you please explain what is meant by the figure "10" and the figure "5?"

A. The figures represent the number of hours the men worked on each of those days—ten hours being usually taken as a day. You see they are paid by the hour.

Cross-Q. 7. And the account of J. C. Zimmermau is footed up at the end of the line bearing his name, thus: "195, 10 c 19.50"; is it not?

A. Yes, sir.

Cross-Q. 8. Have you made in person the search through the books produced to find the name of Edward Crist?

A. I have.

Re-direct by Mr. Howson:

Q. Q. 9. And I understand that you do not find the name of Edward Crist, or E. Crist, among the books examined by you, except for one day in the month of January, 1879, until the 18th day of July, 1879; is that correct?

A. That is to say, that between January 15, 1879, and July 18, 1879, the name of Edward Crist or E. Crist does not appear on our check-rolls. That is correct.

Q. Q. 10. And you do not find that name on your check-rolls for September, October, November, and December, 1878; is that correct?

A. No, sir; I do not for September, October, November, nor December, 1878.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
8d day of May, 1884.

FRED. M. OTT,
Examiner.

THOS. R. DAVIS.

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MAY 5, 1884, 10, A. M.

Examination resumed.

Present, Mr. Storrow for complainants, and Mr. Church for respondents.

WILSON P. WALTERS, *being produced, sworn, and examined, saith:*

Examined by Mr. Storrow:

Q. 1. Are you the same Wilson P. Walters who testified for the defendants at Harrisburg on the 31st of last October, and whose deposition is printed in defendants' sur-rebuttal record, page 121 ?

A. I am.

Q. 2. You then testified that Milton Basehore worked for you from April, 1873, to November, 1877, except that he was at home the first two or three winters to go to school. Is that the fact ?

A. Yes, sir.

Q. 3. Did he live with you during all that time, except the winter when he was at home to go to school ?

A. Yes, sir; he did.

Q. 4. You testified that Orlando Kahney worked for you from the beginning of the winter of 1871, (working the first winter for his board only, and no wages,) down to September 11, 1875. Did he live with you all that time except when he would occasionally be away in the winter ?

A. Yes, sir; he did.

Q. 5. Did you ever hear either Milton Basehore or Orlando Kahney say anything about a talking-machine at Daniel Drawbaugh's before this suit commenced, which was nearly four years ago ?

A. I can't remember of either one of them saying anything; I can't remember.

Q. 6. Do you think you would have forgotten it if either one of them had said it to you ?

[*Objected to as incompetent, calling for a mere opinion or conjecture of the witness.*]

A. I don't think I would.

Q. 7. Did you ever, before this controversy began, hear that Daniel Drawbaugh had invented a talking-machine, or had one at his shop ?

[*Objected to as not proper examination in rejoinder.*]

Complainant's counsel states that it is to meet specific statements in the sur-rebuttal, as will presently appear.]

A. No, sir; I didn't before this case commenced.

Q. 8. How long did you live on the farm which you were living on last fall? When did you move there?

[*Same objection.*]

A. I just can't say the year I moved there, but I lived there nineteen years. I moved away last month. •

Q. 9. While you lived on that farm what post-office and store did you go to?

[*Same objection.*]

A. Camp Hill.

Q. 10. Do you know William H. Martin, twenty-five years old, carpenter, who testified for the defendants last winter at Harrisburg? (See defendants' sur-rebuttal, page 827.)

A. Yes, sir.

Q. 11. It appeared from his deposition, page 828, and that of Abraham May, page 1028, that they and others put up a barn on the Oyster farm that you were farming, at a time which they thought was in 1870. Did they put up a barn on that farm about that time?

A. Yes, sir; they did.

Q. 12. Were you around among the hands while they were putting up that barn, or not?

A. I was working around about them the greater part of the time.

Q. 13. Martin says that the hands boarded with you through the week; is that the fact or not?

A. Yes, sir; all the mechanics boarded with me.

Q. 14. Did you ever hear any of them, while they were at work on the barn, mention anything about a talking-machine at Daniel Drawbaugh's shop, or not?

A. They might have talked about it, but I never heard them, that I can remember of.

Q. 15. If you had heard them, do you think you would have forgotten it?

[*Objected to as incompetent, calling for mere matter of opinion and conjecture.*]

A. I don't think I would have.

Q. 16. Do you know Benjamin F. Zimmerman, thirty four years old, who testified for the defendants at Harrisburg, January 31, 1884, and whose deposition is printed in defendants' sur-rebuttal record, page 822?

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A. I do.

Q. 17. Will you please read the questions and answers in Mr. Zimmerman's deposition, number 11, 12, 13, 14, 15, 16, and 29 to 48 inclusive, and tell me whether you remember the fact of that sale on the Eberly farm, and whether you were present at it?

A. [Witness reads them.] Yes, sir; I remember being at a sale there, but I can't fix no date of the sale; and I think it was a Mr. Wilson's sale, if I am not mistaken.

Q. 18. Did you at that sale have any talk with Zimmerman, or with William Sadler, or with George W. Mumper, about a talking-machine at Drawbaugh's shop?

A. No, sir; I can't remember no such talk.

Q. 19. Did Henry Drawbaugh come to you during this last winter, and mention this sale, and ask you if you had had any such talk there or heard any such talk there?

[*Objected to as incompetent, irrelevant, immaterial, and not in rejoinder.*]

A. I don't know his first name, but I know it is a Mr. Drawbaugh—he and a half-grown girl came there in a carriage to see me. He asked me if I remembered about that talk at that sale. I told him that I couldn't. He said, then, that I was to study over the matter. That maybe it would come clearer to my mind, or something like that.

Q. 20. Was this Mr. Daniel Drawbaugh that came to you or one of his brothers?

[*Same objection.*]

A. One of his brothers. It wasn't Daniel. I know Daniel, and I knew him, but not his first name.

Q. 21. Was it John B. Drawbaugh, who lives at Milltown?

[*Same objection.*]

A. No, sir; that is the 'Squire. It wasn't him.

Q. 22. Was it the one that lives up the valley—at Newville?

A. Yes, sir, or Shippensburg. I don't know which of them places.

Cross-examination waived by Mr. Church.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
5th day of May, 1884.

FRED. M. OTT,
Examiner.

W. P. WALTERS.

Mrs. MARY WALTERS, *being produced, sworn, and examined, saith :*

Examined by Mr. Storrow :

I am the wife of Mr. Wilson P. Walters, who has just testified.

Q. 1. It has appeared that about 1870 a barn was built on the Oyster farm which your husband was farming; that Abraham May and William H. Martin were among the carpenters who worked on it, and that the mechanics boarded at your house during the week; do you remember those facts?

A. Yes, sir.

Q. 2. While that barn was building, did you hear any of the men make any mention of there being a talking-machine at Daniel Drawbaugh's shop?

A. No, sir.

Q. 3. It has appeared that Milton Basehore lived with you from April, 1873, till November, 1877, except the two or three first winters, when he went home to attend school. While he lived with you, did you ever hear him make mention of any talking-machine at Mr. Daniel Drawbaugh's shop?

A. I did not.

Q. 4. It has appeared that Orlando Kahney lived with you from the last part of 1871 to September 11, 1875, except when he would be away a little in the winters. While he lived with you, did you ever hear him make any mention about there being a talking-machine at Drawbaugh's shop?

A. No, sir; I didn't.

Q. 5. This controversy was begun nearly four years ago; before that time, had you ever heard any one make mention of Daniel Drawbaugh's having invented a talking-machine, or having one in his shop?

[Objected to as not proper examination in rejoinder.

Question withdrawn in view of the objection.

The witness had answered quickly: "No, sir; not that I can remember of."

Complainants' counsel requests that the answer be struck out.

Defendants' counsel requests that the record be allowed to stand as above.

Complainants' counsel calls attention to the fact that the question was withdrawn as soon as objection was made, and that the presence of the answer in the book is due to the defendants and not to the complainants.

Defendants' counsel in reply states that the counsel for complainants dis-

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tingly heard the reply of the witness to the question as propounded by him to the Examiner, before he requested leave to withdraw his question; and counsel for defendants requests the Examiner to certify to this fact.

Complainants' counsel says that he heard the answer and has no reason to be dissatisfied with it; that the objection was made while the witness was answering, or immediately afterwards, and that he withdrew the question as soon as the objection was made, suggesting at the same time that the answer, then partly or wholly written, should go out also.]

Cross-examination waived by Mr. Church.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 5th day of May, 1884.

FRED. M. OTT,
Examiner.

MARY WALTERS.

JOHN KAHNEY, being produced, sworn, and examined, saith:

Examined by Mr. Storrow:

My age is sixty-six; I reside at White Hill, East Pennsboro' township, Cumberland county, Pa.; I am a cooper and a laborer.

Q. 1. Are you the father of Norman and Ira and Orlando and Augustus Kahney, who have heretofore testified in this case?

A. Yes, sir.

Q. 2. When did you begin to live at Eberly's Mills?

[*Objected to as immaterial and not proper examination in rejoinder.*

Complainants' counsel refers to deposition of Augustus Kahney (defdt's sur-rebuttal, p. 254) and the deposition of Orlando Kahney (p. 224) in sur-rebuttal, and the deposition of George Hosler, (p. 370,) particularly his 25th answer.]

A. In 1871.

Q. 3. How long did you live in the village?

[*Same objection.*]

A. Four years.

Q. 4. Where did you move to then?

[*Same objection.*]

A. To Martin Best's house.

Q. 5. How far from the village is that?

[*Same objection.*]

A. It is probably a mile.

Q. 6. How near the Gorgas farm is it?

[*Same objection.*]

A. It adjoins Neidig's farm and that adjoins Gorgas' farm. There is a field of Neidig's between Best's and Gorgas'.

Q. 7. How long did you live in that house?

[*Same objection.*]

A. Four years.

Q. 8. Where did you move to then; that is, in the spring of 1879?

[*Same objection.*]

A. To White Hill, where I live at the present time.

Q. 9. Whose house did you live in in the village of Eberly's Mills?

[*Same objection.*]

A. It belonged to George Leonard.

Q. 10. While you lived in George Leonard's house, and in Martin Best's house, did you work any at coopering; and if so, for whom?

[*Same objection.*]

A. Yes, sir; I coopered for Peter Rowe.

Q. 11. Did he carry on the coopering business at or near Milltown?

[*Same objection.*]

A. It is within sight of Milltown.

Q. 12. On the road between Milltown and the railroad station?

[*Same objection.*]

A. Yes, sir.

Q. 13. While you lived in Leonard's house and Best's house, did you ever go to Drawbaugh's shop?

[*Same objection.*]

A. Yes, sir.

Q. 14. How frequently?

[*Same objection.*]

A. Well, I couldn't just tell how often, but I was there a great many times. I might say that in the whole four years I was there fifty times

Q. 15. Do you mean the four years while you lived in Leonard's house?

[*Same objection.*]

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A. Yes, sir; while I lived in Leonard's house.

Q. 16. Did you know pretty much all the people in the village while you lived there?

[*Same objection.*]

A. I knowed all that lived in the place while I lived there.

Q. 17. Who lives now in the Leonard house that you lived in?

[*Same objection.*]

A. The house that I lived in has been torn down and a new one built by Clendennin.

Q. 18. How near the store was that Leonard house when you lived there?

[*Same objection.*]

A. Well, perhaps a hundred yards or so.

Q. 19. Who kept the store while you lived in George Leonard's house?

[*Same objection.*]

A. Mr. Kissinger.

Q. Who kept it after Mr. Kissinger?

[*Same objection.*]

A. Mr. Wilson.

Q. 21. What caused Mr. Wilson to quit keeping the store?

[*Same objection.*]

A. The store was blown up by powder.

Recess until 2, P. M.

Q. 22. Will you state whether or not you were in the habit of going to Mr. Kissinger's store to spend the evening and to meet the neighbors?

[*Same objection, and as leading.*]

A. I did. I was there in the evenings very often.

Q. 23. Did you do the same when Wilson kept the store, or not?

[*Same objection.*]

A. I was there occasionally when Wilson kept the store.

Q. 24. Did you know George Hosler, who used to be shoemaker there?

[*Same objection.*]

A. Yes, sir; I knew him.

Q. 25. How near was his shop to the Leonard house in which you lived?

Same objection.

A. It wasn't over sixty feet away—a mere wagon-road betwixt the shop and the house.

Q. 26. Hosler testifies that his shop was quite a place of resort for people to come in and talk; is that the fact or not?

[Same objection.]

A. Well, there was—most generally every evening when he was at work there was somebody in.

Q. 27. Were you one of those who used to frequent his shop?

[Same objection.]

A. I was in occasionally.

Q. 28. While you lived in George Leonard's house, and while you lived in Martin Best's house, was there ever any talk in your family that Drawbaugh had invented a talking-machine or had one at his shop?

[Objected to as not proper examination in rejoinder.]

A. I never heard a word about it all the time that I lived there.

Q. 29. Did you ever hear anything of the kind in the village, or from anybody while you lived in those two houses?

[Same objection.]

A. I never heard a word from anybody while I lived in those houses.

Q. 30. You say you were frequently in Drawbaugh's shop during the four years that you lived in Leonard's house, from the spring of 1871 to the spring of 1875. What parts of his shop did you go into?

[Same objection.]

A. I would go into it at the south-west corner—up four or five steps—when I first went in.

Q. 31. Was there afterwards any other way of going in; if so, what?

[Same objection.]

A. Only into the basement at the lower side; there they went in to the cider-press.

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Q. 32. What kind of machinery did you ever see in the basement?

[*Same objection.*]

A. I seen a nail-cutter and a cider-press.

Q. 33. How did you get upstairs to the upper story?

[*Same objection, and because leading and assuming.*]

A. There was a pair of steps up in the north east corner.

Q. 34. Was there ever afterwards any other way of getting up to the upper story?

[*Objected to as an improper examination in rejoinder.*]

A. Not unless you went out of doors and went around.

Q. 35. How could you get upstairs when you went out of doors and went around?

[*Same objection.*]

A. You had to go in at the same place where the four or five steps was, at the south-west corner. That was remodeled after I went there—about the second year I lived there, and then there were steps put up at the gable end to the second floor.

Q. 36. Do you remember which of the companies put up those steps at the gable end?

[*Same objection.*]

A. That is more than I am able to tell—whether Drawbaugh or Haucks had them put up.

Q. 37. Did you do any work for the axle company at Drawbaugh's shop?

[*Same objection.*]

A. I did.

Q. 38. What was it?

[*Same objection.*]

A. Helped to put in the machinery—helped to hoist them into the building.

Q. 39. Which end of the building did you help to hoist the machinery in at?

[*Same objection.*]

A. The north gable end.

Q. 40. Were there any outside steps at that north gable end leading up into the second story when you hoisted in that machinery?

[Same objection.]

A. There were no steps when that machinery was hoisted in.

Q. 41. Which story did you hoist that machinery into?

[Same objection.]

A. The second story above the basement—the second floor.

Q. 42. Had you been up in that story before the time when you hoisted up the machinery?

[Same objection.]

A. Yes, sir; I had been there before that.

Q. 43. It has appeared that Drawbaugh had a small room on that story, sometimes called his office-room; do you know that room, and did you ever go into it?

[Same objection.]

A. Yes, sir; I did.

Q. 44. Which corner of the building was it in?

[Same objection.]

A. The north-east.

Q. 45. What other rooms were there at any time on that story?

[Same objection.]

A. There was another shop. They worked in it. It had several work-benches.

Q. 46. Do you remember how many rooms it was divided into when the clock company were carrying on business there?

[Same objection.]

A. It was then divided into four rooms.

Q. 47. Do you remember how many rooms it was divided into when the axle company was carrying on business there?

[Objection repeated, and complainants' counsel is requested to point out that part of defendants' evidence taken in sur-rebuttal to which the evidence to be adduced by this line of examination is in rejoinder. Complainants' counsel says he has already sufficiently done so.]

A. It was only in three parts then—the two end rooms—and then the other was open.

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Q. 48. Did you, at Drawbaugh's shop, while you lived at Milltown, see any things which it was said he invented and made?

[*Objected to as incompetent, irrelevant and not in rejoinder.*

Complainants' counsel also refers to the depositions of Martin, Keef-hauver, Abraham May, George May, and Hamme among others.]

A. I did see some things there that he had made.

Q. 49. Will you name some of them?

[*Same objection.*]

A. Yes sir. I seen his electric clock and his eight-day clock that was run by electricity, and I seen what he called an alarmer, and a kind of a revolving alphabet, that he had there, and his self-feeding nail machine, and what he called a barmometer, and his faucet, that he says he is the inventor of, and a hydraulic ram, that he says he is the inventor of, and his emery stone there that he run by water power, that he said he made himself, I believe, and I seen a machine that he said he made to wrap wire with. That is about all that I remember that I seen.

Q. 50. What kind of a thing was the thing called an alarmer?

[*Same objection.*]

A. Well, he had a square block with a kind of a thing on that, and you touched that and it would ring a little bell up in the opposite corner of the room somewhere. There was a wire attached to this here thing below.

Q. 51. What kind of a thing was the thing you call a barmometer?

[*Same objection.*]

A. It was a thing with a round face on it with figures on from one to twelve—the same as a clock. It had a hand on.

Q. 52. Did he ever tell you how it was made inside, and what made it work?

[*Same objection.*]

A. Yes, sir.

Q. 53. What did he tell you there was inside that made it work?

[*Same objection.*]

A. He told me it was made out of two different kinds of woods—a hard and a soft. I think he told me they were ash and linden.

Q. 54. Did you ever see at his shop a talking-machine, or anything that you were told was a talking-machine?

[*Same objection.*]

Q. 55. Did Daniel Fettrow, the blacksmith, have a son William?

[*Same objection.*]

A. Yes, sir.

Q. 56. Did he have any other sons?

[*Same objection.*]

A. Yes, sir; another son. Clarence is his name—a boy. He was a baby when I lived at Milltown.

Q. 57. Is William Fettrow a little fellow, or is he a big six-footer like his father?

[*Same objection.*]

A. He is a common sized man. He is a man not near as stout as his father.

[*Question withdrawn in view of the objection.*]

[*The foregoing deposition objected to because incompetent and immaterial, and directed to matters too remote and not proper to be inquired into in rejoinder.*]

Cross-examined by Mr. Jacobs, de bene esse:

Cross-Q. 58. In what year did you move to Mr. Best's house?

A. The spring of 1875.

Cross-Q. 59. Where was your shop before you moved to Mr. Best's house?

A. It was on the road betwixt Milltown and White Hill station, within sight of Milltown.

Cross-Q. 60. How long did you occupy that shop?

A. I worked in it through the winter season from 1869 to 1870 for the same man, Mr. Peter Rowe. I worked there three years before I moved to Milltown.

Cross-Q. 61. Will you give me the names of the millers who ran the grist-mill while you lived at Eberly's Mills?

A. Steinberger, Natcher, Cyrus Bowman, Dellinger, and May were all that run it while I was there. May didn't run it until after I moved to Best's house.

Cross-Q. 62. In what year and at what time of year did you move away from Eberly's Mills?

A. I moved away from Eberly's Mills in 1875—I think, on the 27th of March. It was a few days before the 1st of April.

Cross-Q. 63. You say in your 16th answer that you knew all the

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people who lived at Eberly's Mills whilst you lived there. As there could not have been a great many of them, will you please mention all whom you remember?

A. 'Squire Drawbaugh, Henry Gardner, George Leonard, Jacob Smith, Daniel Fettrow. George Drawbaugh, Samuel Dellinger, George Heck, John Heck, William Heck, Steinberger, George Kissinger, Wilson—I don't know his first name, William Natcher, Cyrus Bowman, Eli Good, Daniel Drawbaugh, Hosler—I don't know his first name; that is about all I can mind that was there when I went there, or was there while I lived there.

Cross-Q. 64. I suppose during the fifty visits which you say you made to Drawbaugh's shop during the four years you lived in Leonard's house you met a good many different persons in that shop, did you not?

A. I met a good many different persons in there; yes, sir.

Cross-Q. 65. Will you give me the names of all the different persons whom you remember of meeting in that shop during those four years?

A. No, sir; I can't do that. I couldn't tell you who all I seen there. I could tell you some of the men who worked there. I seen Hauck and I seen this young Nicholas, who worked for Hauck. They worked in the shop at the faucets for Mr. Hauck. I seen 'Squire Drawbaugh at work there. That is about all I remember of seeing at work there. For me to enumerate the men that I seen there that just walked there the way I did, I couldn't do it.

Cross-Q. 66. Am I then to understand that the three persons whom you named in your last answer are the only persons whom you can remember of seeing during those sixty visits which you say you made?

A. Oh, I can enumerate some of them. I seen my own sons there—three of them—that I am sure of. I ain't going to say anything I am not sure of. There was Norman, Ira, Orlando, and Gus—four of them. Me and Gus worked there together.

Cross-Q. 67. In your last answer you have given the names of four additional persons whom you saw in Drawbaugh's shop; probably if you reflect you can give some more.

A. I saw William Heck in there, and Emanuel Dietz and John Heck. They were men that lived there at Milltown. Them is about all I can tell you of now.

Cross-Q. 68. Did you ever see any one from away from Milltown in Drawbaugh's shop?

A. I don't remember that I did—that I recollect of. These men that

lived in Milltown I know were there the same time I was. George Drawbaugh I saw working in the shop.

Cross-Q. 69. You have now given the names of all the persons whom you can remember of seeing in that shop, and your memory upon that point is now exhausted; is that the fact?

[*Objected to as a misstatement of the witness' testimony.*]

A. I could mention two more if it would do any good—Wilson Bear and Crawford; I don't know his first name; I worked for Mr. Bear when he was putting in the machinery.

Cross-Q. 70. You may take a little time to reflect, and give me the names of any other persons whom you remember of seeing there.

A. I think I have told you about all that I remember of seeing.

Cross-Q. 71. The Mr. Crawford of whom you spoke in your 69th answer was a lame man, was he not?

A. Yes, sir; he only has got one leg.

Cross-Q. 72. He lived at Camp Hill, did he not?

A. Yes, sir.

Cross-Q. 73. And was for a time employed by the axle company, or by Mr. Bear, to sell axles, was he not?

A. That is more than I am able to tell whether he was or not, because I know nothing about him.

Cross-Q. 74. Are you acquainted with Captain J. A. Moore, of Camp Hill?

A. I know the gentleman.

Cross-Q. 75. Did you ever see him at Drawbaugh's shop during any of your visits, to it, whilst you lived at Eberly's Mills?

A. I don't recollect seeing him at the shop. I recollect of him coming to the cooper-shop on his way from the shop, and leaving a set of axles there for Mr. Rowe. That I remember.

Cross-Q. 76. Were you acquainted with Mr. M. M. Grove, of Harrisburg, who was a partner in the axle business?

A. I didn't know him.

Cross-Q. 77. Did you do any other work besides coopering whilst you lived in George Leonard's house at Eberly's Mills?

A. Yes, sir; I worked at post-fence making, and as a days' laborer in the summer seasons—in the winter season I coopered.

Cross-Q. 78. I suppose, whilst engaged as a post-fence maker and as a day's laborer you worked at different places around the country, did you not?

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A. Yes, sir.

Cross-Q. 79. And sometime, at a considerable distance away from Eberly's Mills, did you not?

A. Only at one place that we were more than a mile from Eberly's Mills, and that was on Mr Merkle's farm on this side of Sporting Hill. That was the furthest I was away from Milltown while I was making fence.

Cross-Q. 80. What other jobs of fence-making did you do whilst you lived at Eberly's Mills?

A. On Mr. Merkle's farm, below Milltown—down at Etter & Shanklin's mill, about a half a mile below Milltown—and on the Studebaker farm, now belonging to Bowman, right across the creek from Drawbaugh's; and at Daniel Hart's, right close to Milltown there; and at Samuel Hertzler's farm, adjoining Milltown; and at George Heck's farm, now belonging to Hertzler, right close to Milltown. That is about all, and on all them farms I done laboring work by the day, excepting the farm up at Sporting Hill.

Cross-Q. 81. Did you do any laboring work by the day at any other places than those you have named whilst you lived at Eberly's Mills?

A. No, sir; I don't mind of anybody except what I done for the man I was coopering for; I took off some coopering stuff for him, and I took off some coopering stuff in the same township for Samuel Erb; I was there about three weeks; and I worked for Mr. McCormick, in his quarries on the Cumberland side, from July until November while I lived at Milltown.

Cross-Q. 82. In what year did you work for Mr. McCormick?

A. In 1873.

Cross-Q. 83. Did you work for him in any other year whilst you lived at Eberly's Mills?

A. No, sir.

Cross-Q. 84. What took you down to Drawbaugh's shop so often as you have testified you were there in your 14th answer?

A. I just went down merely for to pass time; it wasn't far from where I lived—not more than about 600 yards from where I lived. Sometimes I would go down and get a little something done—would get Mr. Drawbaugh to grind a pair of shears for me, or something that way; and several times our clock got out of order, and I would get Mr. Drawbaugh to fix it for me.

Cross-Q. 85. Did you ever do any work in that shop besides helping to hoist the machinery into the building?

A. That is all I ever done?

Cross-Q. 86. Who else worked at putting in that machinery?

A. My son Augustus, Squire Drawbaugh, Daniel Drawbaugh himself, and George Drawbaugh, and both the John Wolfs—the old gentleman and the young man; they brought the machinery there on a wagon, and Mr. Crawford was there; that is about all of them I recollect.

Cross-Q. 87. Can you tell when that work was done?

A. No, I can't tell you. I don't remember when that was. I kept no account of it at all.

Cross-Q. 88. Was it before, or after you moved away from Eberly's Mills?

A. It was while I lived at Eberly's Mills?

Cross-Q. 89. How long before you moved away?

A. That I can't tell you either.

Cross-Q. 90. Can't you tell whether it was a month or six months, or a year before you moved away. Give me your best recollection?

A. No, sir; I can't tell you that, because when I had the work done Wils. Bear paid me and I didn't trouble myself about it afterwards. I didn't think about it afterwards.

Cross-Q. 91. Might it have been as much as two years before you moved away from Eberly's Mills?

[*Objected to as asking for guess-work.*]

A. Indeed, I can't tell you that. All I can tell you is that I remember when they sold out to Hauck, but I can't tell you what year that was. I know that was while I lived at Milltown, because I went to see Dr. Mosser the day they all met at Mr. Gorgas's house to sell it, and they sold out to Hauck. I know that, but I don't know whether it was the first, second, third, or fourth year that I lived at Milltown.

Adjourned until May 6, 1884, at ten, A. M.

MAY 6, 1884, 10, A. M.

Examination resumed, pursuant to adjournment, by Joshua R. Morgan, special examiner, by consent of counsel.

Present, Mr. Dixon, Mr. Church, Mr. Jacobs, and Mr. Storrow.

Cross-examination of John Kahney by Mr. Jacobs continued:

Cross-Q. 92. As you have had some time to reflect since the close of

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your examination last evening, will you tell me whether you can now give the names of any persons you saw at Drawbaugh's shop while you lived at Eberly's Mill, in addition to those given in your 65th, 66th, 67th, 68th, 69th, and 86th answers?

[Complainant's counsel suggests that if defendant's counsel wished the witness to study the matter over night they should have asked him to.]

A. No, sir; I cannot positively say that I can.

Cross-Q. 93. When did you move away from Martin Best's house?

A. Spring of '79.

Cross-Q. 94. What time of the year?

A. I really can't tell you exactly what time, but some time between the 25th of March and the first of April.

Cross-Q. 95. Whilst you lived there did you get down to Eberly's Mills frequently or not?

A. I would get there sometimes—go there to the store.

Cross-Q. 96. Did you, during that time, get down to Drawbaugh's shop?

A. I did, several times. I could not tell you how often. Oh, I got there several times while I lived there.

Cross-Q. 97. As often as a half dozen times, or oftener?

A. I couldn't tell that. I could not tell you whether I was there a half a dozen times or not. I know I saw his electric clocks there while I was there.

Cross-Q. 98. What took you to Drawbaugh's shop whilst you lived in Best's house?

A. I could not tell you that. I had no particular business, that I know of.

Cross-Q. 99. Can you remember of more than one visit to that shop during that time, namely, the visit when you say you saw the electric clock?

A. I was there once after that. I went there to get a set of knives ground on his stone. I asked the leave of Mr. Drawbaugh to allow me to grind the knives on his grindstone that run by water-power. I ground them myself.

Cross-Q. 100. When was that?

A. Can't tell you what year it was in.

Cross-Q. 101. Was it shortly after you moved into Best's house, or shortly before you moved away, or when? Give us your best recollection.

A. I can't tell you that. I worked at that cooper-shop the whole time I lived there, and I can't tell when it was that I ground those knives.

Cross-Q. 102. What work, if any, was going on in Drawbaugh's shop at that time?

A. That I can't tell you, because I did not take notice.

Cross-Q. 103. I suppose you went into the shop, and ground your knives, and as soon as you had finished, went away; is that correct?

A. That is correct.

Cross-Q. 104. Whereabouts in the shop did you grind them?

A. I was on the first floor, where his turning-lathes is.

Cross-Q. 105. You did not go up stairs, did you?

A. I went up four or five steps there. I don't remember whether there is four, or five.

Cross-Q. 106. You mean you went up the four or five steps on the outside of the shop from the ground to the first floor, do you not?

A. Yes, sir; to the first floor where he had the machinery on.

Cross-Q. 107. And you did not go up-stairs from the floor on which you ground your knives?

A. I think I went up and asked Mr. Drawbaugh's leave to grind my knives. I think he was up-stairs.

Cross-Q. 108. How long were you up-stairs with him?

A. Well, I wasn't up more than five minutes.

Cross-Q. 109. Do you think you were up there that long?

A. Well, I can't tell you whether I was there five minutes, or whether I was there less or more.

Cross-Q. 110. Besides your asking of Mr. Drawbaugh permission to grind your knives, and his granting you permission to do so, what conversation, if any, did you have with him on that occasion?

A. I don't know that we had any conversation of anything.

Cross-Q. 111. Then, as I understand you, you can now remember of only two visits which you made to Drawbaugh's shop whilst you lived in Martin Best's house; is that correct?

A. I couldn't tell you whether I was there oftener or not—I may have been.

Cross-Q. 112. But the two visits which you have spoken of, to wit: the visit when you say you saw the electric-clock, and the visit when you ground your knives, are the only ones you can now remember; is that correct?

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[*Objected to by complainants' counsel, as the witness has already fully answered that.*]

A. Yes, sir; that is about correct; that is all I remember that I am sure of—that is, whilst I lived in Best's house.

Cross-Q. 113. Did you see any one besides Mr. Drawbaugh in the shop at the time you ground your knives?

A. That is more than I remember—whether any one but himself was there. I know he went and started the stone for me to grind the knives. I don't remember anybody but himself being there.

Cross-Q. 114. Was any one with you at the shop at the time you say you saw the electric clock?

A. I don't remember that there was anybody in but Mr. Drawbaugh and myself at that time.

Cross-Q. 115. What led you to go to the shop on that occasion?

A. That is more than I can tell. I don't know what in particular led me there. I just happened to get in the shop, and Mr. Drawbaugh was in there, and I saw the clock.

Cross-Q. 116. Did Mr. Drawbaugh show you the clock, or did you just see it as you were walking around the shop?

A. He showed it to me. He had it in a side room, and took me in and showed it to me—showed me how it worked.

Cross-Q. 117. When was that visit made?

A. That was sometime betwixt '75 and '79, whilst I lived in Best's house.

Cross-Q. 118. Is that as near as you are able to get at the time?

A. That is about as near as I am able to get at the time.

Cross-Q. 119. Was that visit made on a Sunday or on a week-day?

A. That is more than I am able to tell.

Cross-Q. 120. Whereabouts in the shop did you find Mr. Drawbaugh, and what was he doing when you found him?

A. He was on the second floor in the shop that he worked in. That is more than I am able to tell—what he was doing. I don't remember that.

Cross-Q. 121. How long were you in the shop on that occasion?

A. I might have been there an hour—probably more.

Cross-Q. 122. Did you see only one or more than one electric clock in the shop at that time?

A. There were two in—one was going and one was not.

Cross-Q. 123. How did you know that they were both electric clocks?

A. Because Mr. Drawbaugh told me.

Cross-Q. 124. Please describe them.

A. One was a large case to it—it reached up against the ceiling; the other was one that was hung against a partition.

Cross-Q. 125. Did the one which reached up against the ceiling stand on the floor?

A. I think it did.

Cross-Q. 126. Are you not positive about that?

A. I am not; I don't know whether there was anything laid under it or not. I did not take notice of that.

Cross-Q. 127. Please give us the dimensions of it.

A. That is more than I can tell you. I can tell you what it was made of. I thought it was made of walnut, with different kinds of carvings on it—carved-out walnut wood.

Cross-Q. 128. What was the width of the clock?

A. That is more than I am able to tell. It might have been betwixt three and four feet and might have been not so much; and it was carved upon both sides, and it was carved at the top.

Cross-Q. 129. Was it the same width from top to bottom, or was it wider below than up about the middle, or what was the shape of it?

A. As near as I can remember, it was wider in the bottom than in the centre. If I remember right, it had carved work from the lower part up to the center, and above it was wider again, and then carved work in there, and carved work around the top, as near as I can remember.

Cross-Q. 130. It was a large, handsome clock, was it not?

A. It was a nice piece of furniture.

Cross-Q. 131. It was both large and handsome, was it not?

A. It was a handsome piece of work; it was a large piece of work.

Cross-Q. 132. Which of these two clocks was going?

A. It was the small one.

Cross-Q. 133. The one that hung against the partition?

A. The one that hung against the partition; yes, sir.

Cross-Q. 134. Can you give the dimensions of that one?

A. I cannot; I didn't take as much particular notice of that as I did of the big one.

Cross-Q. 135. Then it was the one that was not going that you were particularly interested in; was it?

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A. The one that was not going was the one I took particular notice to.

Cross-Q. 136. You have told us something with regard to its size and shape and the material of which its case was made. Will you go on and describe it further—tell us about its front, and what, if anything, you saw in the inside of its case?

A. I recollect seeing the pendulum, and I saw the face and underneath where the hands worked. I saw two spools wrapped with wire, and I seen the hands. That is about all that I took notice of.

Cross-Q. 137. What kind of doors did the clock have?

A. The doors were made out of the same material as the rest of it was, but whether it was a double door or a single door I don't remember.

Cross-Q. 138. Do you mean us to understand that the door was—or if more than one, the doors were—composed entirely of wood which you thought was walnut?

A. No, sir; I do not think that, for I think there was brass hinges on the doors.

Cross-Q. 139. Was there any glass in the door or doors?

A. I don't remember that. All I can say is that you could see the brass pendulum work. Whether it was just a hole there, or whether it was glass there or not I can't tell you that.

Cross-Q. 140. I am referring now to the larger, handsomer standing clock which you say reached up against the ceiling, and which you say was not going; how did you see its pendulum work if it was not going?

A. Mr. Drawbaugh shoved it with his finger. It was a very heavy thing—looked to be.

Cross-Q. 141. Was the pendulum-bob suspended by any rods; and if so, how many?

A. There was only one—a brass rod.

Cross-Q. 142. Did Mr. Drawbaugh show you anything about the hanging clock that was up against the side of the partition?

A. No, sir.

Cross-Q. 143. How long were you in that side room with him?

A. Well, I can't just tell you how long. I was in with him—probably a half hour or so.

Cross-Q. 144. Was the whole of the time whilst you were in there with him taken up by looking at and explaining that clock?

A. Oh, no. We were talking about other things. I can't remember just what we were talking about.

Cross-Q. 145. Can you remember anything besides the clock that you were talking about in there?

A. I do not.

Cross-Q. 146. How did Mr. Drawbaugh come to take you in there and show you the clocks? Did you ask him to see them, or did he volunteer to show them to you, or how was it?

A. That I don't remember. All I remember is this, that the boys, my sons, spoke about the clocks at my house, and then I went to the shop. I don't know whether I asked Mr. Drawbaugh to show them to me or whether he showed them to me without asking. I can't tell you that.

Cross-Q. 147. That was the first time you had seen his electric clocks, was it?

A. That is the first time I remember of seeing them.

Cross-Q. 148. And you can't tell us how long after you moved into Martin Best's house in March, 1875, that visit was made, can you?

A. I cannot.

Cross-Q. 149. Nor how long before you moved away from Martin Best's house, in March, 1879?

A. No, sir; I cannot tell you what year it was in.

Cross-Q. 150. All that you can say with regard to the date of it is that it was whilst you lived in Martin Best's house, and some time between the spring of 1875 and the spring of 1879; is not that correct?

A. That is correct, sir; it was betwixt that time.

Cross-Q. 151. I suppose there were other things in the side room in which Mr. Drawbaugh showed you the electric clocks, were there not?

A. I don't remember what was in that room besides clocks.

Cross-Q. 152. In what part of the shop was that room?

A. Well, the way the shop stands, as near as I can come, it was in the south-east corner of the shop; that is, the room. I do not say that the shop stands exactly north and south, but the way I call it, it stands in the south-east corner. It was on the second floor, but mind there was a basement, but I do not call that a floor.

Cross-Q. 153. Then this room was on the second floor of the shop, excluding the basement?

A. Yes, sir.

Cross-Q. 154. Please tell us everything else you saw in Mr. Drawbaugh's shop, besides the two electric clocks, at the time of that visit?

A. That was about all I saw that time, that I looked at.

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Cross-Q. 155. How did you come into the shop at that time?

A. I went up a pair of steps into the shop.

Cross-Q. 156. Did you go up the short pair of stairs on to the first floor and then up the inside stairs to the second floor, or did you go up the outside stairs to the second floor without going through the first floor at all?

A. That is more than I am able to tell you, whether I went in at the gable end or at the side—the low steps.

Adjourned till two o'clock, P. M.

2 O'CLOCK, P. M.

Examination resumed, pursuant to adjournment.

Present, Mr. Jacobs, Mr. Church, Mr. Storrow, and Mr. Howson.

Cross-Q. 157. In your 151st answer you say that you don't remember what was in the side room besides the clocks; I suppose there were other things there—you have no recollection, have you, that the clocks were the only things in that room?

A. No, sir; I have no recollection that there were. There may have been other things there, but I don't recollect that there were.

Cross-Q. 158. There might have been a great many other things in that room at that time, might there not, which you do not now remember?

[*Objected to as argumentative and incompetent.*]

A. Yes, sir; there might have been. I can remember nothing but them clocks, that I can think of now.

Cross-Q. 159. You were in other rooms in the shop during that same visit, were you not?

A. Yes, sir; I was in other rooms that same day.

Cross-Q. 160. In what rooms?

A. In the room adjoining that on the south-east corner. That room was in the south-east corner.

Cross-Q. 161. To get to the south end of the shop you had to pass through the whole length of the shop from the north end, whether you came up by the stairs on the outside or by the stairs on the inside of the shop, had you not?

A. Yes, sir; the stairs were both at the north end of the shop.

Cross-Q. 162. Then you were all through the second floor of the shop—at least during that visit—were you not?

A. All except the one corner room. The second floor was in four parts.

Cross-Q. 163. The room which you were not in on that occasion was Mr. Drawbaugh's private room on the north-east corner of the shop, was it not?

A. That was the room which I was not in on that occasion when I saw those clocks.

Cross-Q. 164. And you are not certain whether you were on the first floor or not, at that time?

A. I am not. I don't know whether I went up outside, or inside.

Cross-Q. 165. Will you now tell us everything you remember of seeing in the shop during that visit, besides the two electric clocks you have spoken of?

A. I saw a turning-lathe there; there was a grindstone; there was a small emery-stone, that was run by water power. I remember seeing that in the south-east corner, and in the north-east corner I saw his tool-bench, on which were all kinds of tools, but just what they were I don't remember. I think there was a small press there, but I am not quite sure.

Cross-Q. 166. I suppose after the lapse of a number of years it is impossible for you to remember just what you did see there, is it not?

[*Same objection as to 158, and because the witness has stated things he saw there.*]

A. Yes, sir; I don't remember seeing anything but what I tell you; what I didn't see I don't want to tell you.

Cross-Q. 167. But you don't pretend at all to remember all that you did see in the shop at that time, do you?

A. Oh, there might have been some things that I did see, that I did not take any particular notice of.

Cross-Q. 168. There were a good many things lying around on the benches, besides tools, were there not?

A. I didn't take notice of anything excepting tools, that I mind of.

Cross-Q. 169. There might have been, however, other things lying in the benches which you do not mind of, might there not?

[*Objected to as mere hypothesis and argumentative.*]

A. There might have.

Cross-Q. 170. Have you been in that shop at any time since you moved away from Martin Best's house in the spring of 1879?

A. I have been in there several times since.

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Cross-Q. 171. Tell us, if you can, any particular occasions on which you went there since that time.

A. I can't, more than—the last time I was there was last winter. I can tell that for certain. That was in February.

Cross-Q. 172. Is that the only visit that you can particularly remember?

A. I was in several times before that, but I can't just tell you the time when it was.

Cross-Q. 173. Do you remember what you went there for at any time since you moved away from Best's house?

A. No, sir; I do not.

Cross-Q. 174. Did you go there on business or merely for pastime?

A. Well, I merely stopped in as I passed there.

Cross-Q. 175. How did you come to be passing there—where were you going?

[Objected to, unless the question be made specific as to the occasion, the witness having referred to more than one occasion.]

Defendants' counsel says he refers to the occasion mentioned in the last answer of the witness.]

A. I was going to the creek, and passed the shop.

Cross-Q. 176. What were you going to the creek for?

A. I used to go over there and fish sometimes.

Cross-Q. 177. What took you to Drawbaugh's shop last February?

A. I was at the creek at the same time.

Cross-Q. 178. How long were you in the shop at that time?

A. I was in probably a half an hour or more.

Cross-Q. 179. You have told us that before you moved away from Eberly's Mills to Martin Best's house, in the spring of 1875, you helped to put the machinery in the shop for the axle company; can you tell us any other particular occasion of your being at Drawbaugh's shop whilst you lived at Eberly's Mills?

A. No, sir, I cannot; that was the only time I remember whilst I lived at Eberly's Mills; because I was there often whilst I lived Eberly's Mills, but then the time and date I can't give you.

Cross-Q. 180. Whilst you lived at Eberly's Mills did you ever do any work in that shop besides help to put in the machinery for the axle company?

A. No, sir—only work that I did for myself. I made cider there in the basement of the building.

Cross-Q. 181. The fifty visits which you say you made whilst you lived at Eberly's Mills were scattered over all of the four years that you lived there, were they not?

[*Question objected to as the witness has not positively and specifically stated that he made that precise number of visits.*

Defendants' counsel refers to answer 14.]

A. Yes, sir.

Cross-Q. 182. Can you tell us how many visits you made the first year you lived at Eberly's Mills?

A. I cannot.

Cross-Q. 183. Can you tell us how many visits you made the second year you lived at Eberly's Mills?

A. No, sir.

Cross-Q. 184. Can you tell us how many visits you made the third year you lived at Eberly's Mills?

A. I cannot.

Cross-Q. 185. Can you tell us how many visits you made the fourth year you lived at Eberly's Mills?

A. I don't remember how many I made.

Cross-Q. 186. You were in the shop a number of times the last year you lived at Eberly's Mills, were you not?

A. I was in, but how often I cannot tell you.

Cross-Q. 187. Give us your best recollection, if you have any on the subject—were you in a half dozen times, or more, or less, during the last year you lived at Eberly's Mills?

[*Objected to as asking for mere guess-work, the witness having already distinctly stated that he was in often during the four years, but that he does not undertake to give particular dates.*]

A. I might have been in a half dozen times, or I might have been in more. I would go back and forwards to the creek, and I would stop at the shop—sometimes I would not go further than the lowest floor; but if I am to positively tell you how often I was in the shop the last year I lived there, I can't do it.

Cross-Q. 188. You were in the shop a number of times during the next to the last year that you lived at Eberly's Mills; that is to say, during the year extending from the spring of 1873 to the spring of 1874, were you not?

A. I don't know that I was in that year more than any other year.

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All I remember is during that time I helped to put in the machinery for the Axle Company.

Cross-Q. 189. And that visit, namely, when you helped to put in the machinery for the Axle Company, is the only one concerning which you can give us any definite information, is it?

[Objected to as being vague, indefinite, and misleading.]

A. That is the only one that I am sure of when it was that I was there, and I can't give the year for that.

Cross-Q. 190. When did you first hear that Daniel Drawbaugh had a telephone or talking-machine?

A. It was since I left Best's house; I can't just remember what time it was; the first that I heard, I heard them say—my youngest son told me—that Drawbaugh had sold out his interest in the telephone to the Telephone Company; a telephone or talking-machine he called it; that was the first I heard of it.

Cross-Q. 191. What is the name of your youngest son?

A. Norman.

Cross-Q. 192. Your son, Orlando Kahney, has testified on behalf of the complainants, (see complainants' record, p. p. 994-995,) that he knew about Daniel Drawbaugh's talking-machine a short time after he came back from the Centennial. I infer from your testimony that he never told you anything about it up to the time when your son Norman told you that Drawbaugh had sold out his interest to the telephone company, after you moved away from Best's house in the spring of 1879; is that correct?

A. I never heard him say a word about it; I never knew he knew anything about it until last winter a year, when he was brought in from Illinois; that is the first that I knew that he knew anything about it.

Cross-Q. 193. I suppose your four sons have known of a good many things that have gone on in the neighborhood that they have not told you about; you have no idea, have you, that they tell you everything they see or hear talked about?

A. No, sir; I do not. I don't expect that of my sons—to tell me everything they hear in the country, or know of; but I know this much: they told me Drawbaugh was making the electric clocks, and they told me he was making hydraulic rams; and he told me he had sold out his telephone, or talking-machine, as he called it; he told me that.

Cross-Q. 194. You are hard of hearing, are you not?

A. I am harder of hearing now than I was four years ago; four years

ago I could hear common talk, but I can't do it now.

Cross-Q. 195. Even then, you had difficulty with your hearing, had you not?

A. Well, not so much; I could understand people that talked common.

Re-direct examination by Mr. Storrow:

Q. *Q.* 196. What was the first you ever heard of anybody having a telephone?

[*Objected to as immaterial, irrelevant, and not proper re-direct examination.*]

A. The first time that I heard of a telephone was betwixt the Centennial and '79; it was after the Centennial, I know that. I have a sister living here in this city, (Philadelphia); she used to send me two papers nearly every week, and in one of these papers I seen it; that there was a man in the East, in Boston, had put up a line of wires, and had it patented, and called it a telephone.

Q. *Q.* 197. Do you remember whether the paper said where the line of wires run to, or how long it was?

[*Same objection, and also as calling for hearsay.*]

A. The papers said it was eighteen miles long; I don't remember which it was—Concord or Providence—it was one of those two places.

Q. *Q.* 198. Do you remember whether the paper said who the man was that had the telephone and the line?

[*Same objection.*]

A. It did.

Q. *Q.* 199. What was the name?

[*Same objection.*]

A. Bell and Watson—two names.

Q. *Q.* 200. In your 67th cross-answer, you speak of three men whom you met at Drawbaugh's shop, and who lived at Milltown—Wm. Heck, Emanuel Dietz, and John Heck—where do those three men live now?

A. William Heck still lives at Milltown and Emanuel Dietz has got his home with him; John Heck lives in East Pennsboro' township, on his mother's farm.

Q. *Q.* 201. What relation is that John Heck to Mr. George B. Heck, who died some ten years ago at Milltown?

[*Objected to as irrelevant, immaterial, and not proper re-direct examination.*]

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A. They were brothers.

Q. Q. 202. Is that the Mr. John Heck who settled up Mr. George B. Heck's estate?

[*Same objections.*]

A. Yes, sir.

Q. Q. 203. Who lived in Mr. Martin Best's tenant-house the year before you went there?

[*Same objections.*]

A. A man by the name of Daniel Condry.

Q. Q. 204. Who lived there the year before that?

[*Same objections.*]

A. Joseph Orris.

Examination taken, reduced to
writing, and by the witness sub-
scribed and sworn to before me this
6th day of May, A. D. 1884.

JOSHUA R. MORGAN,
Notary Public and Special Examiner.

JOHN KAHNEY.

SIMON C. WILSON, *being produced and sworn, deposes and says as follows:*

Examined by Mr. Storrow:

Q. 1. State your name, age, residence, and your official position.

A. Simon C. Wilson, Harrisburg; full forty-two years; mayor of Harrisburg.

Q. 2. Were you at one time superintendent of telegraphs for the Northern Central railroad; and if so, when did you assume that position, and when did you cease to occupy that position as superintendent of telegraphs?

A. I was superintendent of telegraphs from 1867 until—I am not exactly sure of the date, but it was in 1874.

Q. 3. Do you remember whether it was in the early part, or the last part of 1874?

A. That I am unable to say in the absence of data.

Q. 4. Where was your residence and office during that time?

A. Still at Harrisburg.

Q. 5. After you ceased to be technically superintendent of telegraphs for the railroad, what position did you hold in reference to that line, and where did you continue to reside?

[Objected to as leading.]

A. During the re-organization of the Northern Central railroad, I was division operator for a short time—how long I can't say, and I remained in the service of the company thereafter as dispatcher and representing the superintendent of the Baltimore division at Harrisburg, until the latter part of 1876 or 1877, when I retired from the service of the company.

Q. 6. While you had charge of the telegraphs of the company, did you acquire any electrical-shop for the company; and if so, whose machine-shop did you buy out, and when was it?

[Objected to as leading.]

A. On the 10th of December, 1870, I closed by letter an offer made me by James J. Clark for the purchase of a shop for the manufacture of telegraphic apparatus, which shop was located in Eby's building, corner of Fifth and Market, in Harrisburg, and took possession of the shop very soon thereafter—as soon as Mr. Clark arrived to close the bargain.

[Answer objected to because it is not the best evidence.]

Q. 7. How near the offices of the railroad company was this shop?

A. It was in the third floor of the same building occupied by the general office of the Northern Central Railroad Company. That company occupied the whole of the second floor and portions of the third.

Q. 8. After your company acquired that shop, what use did they make of it, if any?

A. We used it for the petty running repairs of the telegraph-instruments, and telegraph material—that is, belonging to the company.

Q. 9. Was it under your charge, or not?

A. It was under my charge.

Q. 10. Did it continue under your charge so long as you were connected with the telegraphs, or was it given up previously?

A. It continued under my charge so long as I was connected with the telegraph department, and when that connection ceased the shop was broken up?

Q. 11. While it was under your charge did you know Daniel Drawbaugh, and did he ever come to see you at your office or at the shop?

A. I first made Mr. Drawbaugh's acquaintance in that shop, and he visited me afterwards during the time I had the shop—various times.

Q. 12. Did you ever have any dealings with him or did he ever get any electrical supplies from you at the shop?

A. I never had any business dealings with him further than in his

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visits to the shop at different times. I gave him such little articles from our scrap as he desired. By scrap I mean odds and ends of cast-off telegraph machines and battery materials which were of no use to the company.

Q. 13. Did he visit you very seldom or quite a number of times?

A. He visited the shop quite a number of times.

Q. 14. If there was any particular kind of electrician's supplies which he wanted at any time, please state what it was.

A. Well, he seemed to desire those portions of material relating to the construction of magnets and some odds and ends of battery material. I am unable to state the exact articles.

[The first part of the answer is objected to as mere inference.]

Q. 15. Did he ever bring to you, to show, any electrical contrivances which he professed were of his own construction?

A. On one occasion he brought me a clock which he claimed he had constructed—an electrical clock.

Q. 16. Did he ever bring you an electrical speaking-telephone or talking-machine?

[This and the preceding questions and answers are objected to by defendants' counsel as immaterial, irrelevant, incompetent, and not proper evidence in rejoinder, and as a mere attempt to substitute the want of knowledge or recollection on the part of the witness now on the stand, for the positive knowledge and recollection of the witnesses who have testified on behalf of the defendants.]

The complainants' counsel suggests that the phrase "positive knowledge and recollection" does not apply very well to the defendants' witnesses.]

A. No, sir.

Q. 17. Did he ever say to you, or give you to understand, that he had invented, or that he had an electric speaking-telephone or talking-machine?

[Same objection.]

A. No, sir; not during that time that we are speaking of, or that we had this shop.

Q. 18. Did he ever speak to you of any such thing while you were connected with the railroad before you left in '76 or '77?

[Same objection.]

A. We never had any conversation on any subjects except in the shop named, nor at any time within that period did he speak on the subject of telephone to me.

Q. 19. Were your relations with him such during that time that if he had invented and had in his possession practical operating speaking-telephones which he was desirous of making known he would have mentioned the subject to you or not?

[Same objection, and the question further objected to as not calling for evidence, but mere inference, opinion, and guess-work.]

The Examiner is requested to note that after the objection was made the question was modified by the insertion of the words "which he was desirous of making known," and the Examiner so certifies; which words are further objected to by defendants' counsel as vague and indefinite.]

A. There was no reason why he shouldn't, and I am very much surprised that he didn't.

Q. 20. If at any time while you were connected with the telegraphs he had brought to you a practical speaking-telephone, and told you that his great object and desire was to patent it and make some for use, would he have had difficulty in obtaining from you the needed assistance?

[Same objections.]

A. If he had demonstrated that such an instrument was a success, I for one would certainly have aided him, and he would have had no difficulty in getting all the aid he wanted.

Adjourned till to-morrow morning, May 7th, 1884, at 10 o'clock.

MAY 7, 1884, at 10 o'clock.

The examination is resumed, pursuant to adjournment.

Present, Mr. Church, Mr. Dixon, Mr. Jacobs, and Mr. Storrow.

The witness now says: I desire to correct my answer No. 2. I should have said in that answer that I took charge of the telegraph in 1864 instead of 1867.

Q. 21. If at any time while you were in charge of the telegraph Drawbaugh had mentioned to you that he had invented and made a practical and successful speaking-telephone, a knowledge of which he was willing freely to communicate to the public, would you have rested with such a mere mention, or would you have taken steps to see the thing and ascertain for yourself what it was?

[Same objection, and also because hypothetical and clearly incompetent, and calling for mere inference and conclusions, the witness having stated that during the period mentioned he had no conversation with Mr. Drawbaugh on the

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subject of telephones whatever, and the question asking if he had had such conversation could he have done so and so is clearly immaterial, irrelevant, and incompetent.]

A. I would have most certainly invited him to bring the thing over to my shop or office, or taken some other means of seeing it.

Q. 22. If, while you had charge of the telegraph, he had brought to you a practical and successful operative telephone, and told you he was willing to allow the public to freely test the same by using it, would you have been contented by merely looking at it, or would you have tried to talk through it?

[The last objection is repeated.]

A. I would have most certainly had him to test it.

Q. 23. State whether or not you had the necessary conveniences and appliances for the purpose in the building where your shop and office were.

[Same objection.]

A. We had; that being the general head-quarters of the telegraph service of the company.

[The above deposition is objected to by counsel for defendants because immaterial and incompetent, and also because it is incompetent evidence in rejoinder, it simply being a continuance of evidence taken at great length in reply.]

Complainants' counsel calls attention to the depositions taken by the defendants in sur-rebuttal by which they attempted to prove that it was known all over the neighboring counties that Drawbaugh had a talking-machine, and refers among others to the depositions of Goodyear, Bricker, Spafford, Miller, Drawbaugh, North, Dale, and others.]

Cross-examined, de bene esse, by Mr. Dixon:

Cross-Q. 24. What was your occupation prior to your election as mayor?

A. I was engaged in the United States service in the construction of the new post-office and court-house at Harrisburg—was rated as day-watchman.

Cross-Q. 25. What salary did you receive for your work as day-watchman?

A. One dollar and fifty cents a day for every day in the month.

Cross-Q. 26. How long were you working as watchman in that building?

A. Well, four years.

Cross-Q. 27. When you were in the service of the company what was your salary as dispatcher?

A. Ninety dollars per month.

Cross-Q. 28. When you were division operator, what was your salary?

A. Ninety dollars; they merely changed the titles in the re-organization; that was all.

Cross-Q. 29. Prior to that, when you were superintendent of telegraphs of that company, what was your salary?

A. Well, at the last it was a hundred and ten dollars a month, towards the last of my term. The salary at that figure was never changed, except the general reduction of ten per cent. My salary ranged from forty-five dollars a month to one hundred and ten dollars a month while I was superintendent.

Cross-Q. 30. This shop for the "petty running repairs of the telegraph instruments, and telegraph material" was a room in the office-building of the railroad company, was it not?

A. It was a room in the building known as Eby's building.

Cross-Q. 31. And that was the building occupied by the general offices of the company, was it not?

A. A portion of the building was occupied as general offices by the Northern Central Railroad Company.

Cross-Q. 32. Was your office, as superintendent, on the second or third floor of that building?

A. On the second floor.

Cross-Q. 33. And this room you have mentioned was on the third floor, was it not?

A. Yes, sir.

Cross-Q. 34. While you were superintendent, your time during office hours was quite fully occupied in the various duties of your position, was it not?

A. I had no office hours.

Cross-Q. 35. Well, during the day then?

A. My time was fully occupied by the duties of my position in the service of the company, and in whatever other sphere of duty they chose to call me; that is about as near as I know how to get at it. This is as near a description of railroad life as I can get at it.

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Cross-Q. 36. What year was it when Mr. Drawbaugh first called on you as you have stated in your direct examination?

A. I cannot say positively.

Cross-Q. 37. If you can, fix the date within one or two years?

[*Objected to as asking for guess-work.*]

A. I should judge it was about 1872, but of this I am not positive.

Cross-Q. 38. What makes you judge it was about that time?

A. I purchased for the railroad company the shop named in this testimony on the 10th of December, 1870, the bargain being closed a short time thereafter on the arrival of Mr. Clark, its owner, who was absent from the city, (Harrisburg.) It was a considerable time after I had taken possession of the shop that I first met Mr. Drawbaugh there; it may have been a year—possibly more. To the best of my recollection Mr. Drawbaugh first came to the shop accompanied or introduced by John H. Putt, a telegraph lineman, who was under my jurisdiction. I fix the date of the purchase of the shop from records in my possession.

Cross-Q. 39. If I understand you aright, then, it is your best recollection that Mr. Drawbaugh came there the first time within one, or possibly two, years after your purchase in 1870; is that correct?

A. To the best of my recollection it is.

Cross-Q. 40. Please state in detail what occurred during that first call?

A. Mr. Drawbaugh called like any other visitor, not for any special purpose that I know of. I may have said, "How do you do, Mr. Drawbaugh?" and if I did he very likely said "How do you do, Mr. Wilson?" This is the first time to my knowledge that I ever met Mr. Drawbaugh to know him or to speak to him.

Cross-Q. 41. What else occurred during this first interview?

A. I am unable to state specifically what occurred at this interview and of the frequent others which followed it, with, perhaps, one or two exceptions. What I mean by the exception is I cannot specify the days or dates of those interviews. My impression of my interviews with Mr. Drawbaugh must be used collectively.

Cross-Q. 42. Then, regarding this first interview, you do not now remember anything else that occurred beyond the fact stated by you, that if you said, "How do you do, Mr. Drawbaugh?" he very likely said, "How do you do, Mr. Wilson?"

[*Objected to as already fully and sufficiently answered.*]

A. My impression is he left after he got through with what he had to say, and I desire this not to be construed as an evasive answer.

Cross-Q. 43. Well, what did he have to say?

A. At the different interviews had with Mr. Drawbaugh the drift of the conversation between Mr. Drawbaugh and myself were generally upon electrical matters. I recollect of him speaking on one occasion—what interview I can't specify—he spoke about an electrical clock, or a clock which he operated by an earth battery. During these interviews he brought me a clock to the shop—

[The above answer is objected to by Mr. Dixon as not responsive to the question.]

an electrical clock which was to be operated through the medium of another clock. In these interviews he also spoke of the construction of a magnet for some purpose or other, of great power. He also asked me at different times for cast-off material relating to electrical machinery, and which I freely gave him, and was glad to help him in his work whenever I could. I have a faint recollection, but I am not absolutely sure, that he at one time showed me also a piece of machinery which I can best describe as an oscillating magnet. My reason for answering this question in the manner in which I do is for the reason that I cannot separate the different conversations we held upon the subject, and am, therefore, compelled to consider them collectively.

[The objection to the answer is repeated.]

Cross-Q. 44. I do not ask you what occurred at subsequent interviews, but my question was confined to what was said at the first interview, which occurred, as you have stated, about 1872. Did Mr. Drawbaugh, when he was brought there by Mr. Putt, bring any electrical clock at that first visit, about 1872?

A. He may have done so, and he may not have done so; I am unable to fix the date of the exact visit on which he brought the clock.

Cross-Q. 45. Then, as regards that first interview, when you were introduced to Mr. Drawbaugh for the first time, you are unable to remember whether he had with him, or whether he showed you, an electric clock, which, to people who have not before seen it, is a novel, striking and wonderful piece of mechanism; nor are you able to remember on that first interview anything that was said about such an article, nor, in fact, are you able to state anything that was said at that first interview distinct from subsequent interviews, although you remember the occasion,

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and about the time, and how, and by whom Mr. Drawbaugh was brought to your notice at that time?

[Complainants' counsel object to the question as a mere attempt at argument. They object to the assumption in it that there was anything novel in an electrical clock in 1872, because it has been proved in this case that such a thing was known, and used, and described in books twenty years previously, and was in use in Harrisburg at about that time.]

A. As I before said, I am unable to specify the separate conversations from my recollection of them, but I fix the circumstance of Mr. Drawbaugh's first visit to me from this circumstance: that some time previous to this visit I was gunning in Cumberland county, and while in the neighborhood of Milltown I shot some tame ducks, which were alleged to be Drawbaugh's, and Putt was with me at the time; we—that is, Putt and I—often spoke of the affair, and that was the first thing that entered my head when Putt and Drawbaugh entered the shop, and I was exceedingly careful not to communicate that intelligence to Drawbaugh. The ducks were shot in mistake for wild ones.

Cross-Q. 46. Did you ever communicate the intelligence of this to Mr. Drawbaugh, or offer to settle for the duck; or was the account balanced by the supplies of "scrap" you had given him?

A. No, sir; I never communicated the fact to Mr. Drawbaugh; it is not the custom of our part of the country. And I never gave Mr. Drawbaugh the "scrap" for any such purposes, for the reasons already stated.

Cross-Q. 47. Then, as regards this first interview, beyond the circumstances of the introduction of Mr. Drawbaugh, you do not recollect anything that you are sure was said at that interview, do you?

A. I don't say that Mr. Drawbaugh was introduced to me; I only state the probability that he was. I cannot answer this question specifically for the reasons already given.

Cross-Q. 48. Do you have any recollection of his being introduced to you?

A. If he was there was no impression left on my mind of the introduction.

Cross-Q. 49. You mean you have now no recollection of his being introduced to you?

A. My recollection of his first visit consists of the fact of meeting him.

Cross-Q. 50. And that is all, is it?

A. So far as it relates to any question of introduction or any specific conversation at that first visit.

Cross-Q. 51. Then, as you have lost all recollection of the specific conversation had at that first interview, there might have been a great many things spoken of which you could now honestly say you have no recollection of, could there not?

A. I have no doubt of it, from the fact that these conversations took place at least ten years ago; my recollections of these conversations are from specific impressions made upon me at that time.

Cross-Q. 52. How long was it after this first interview before Mr. Drawbaugh called the second time upon you?

A. I never noted the periods between his visits.

Adjourned until two o'clock, P. M.

2 O'CLOCK, P. M.

Examination resumed, pursuant to adjournment.

Present, same counsel as before.

Cross-Q. 53. Was it a long, or was it a short time between Mr. Drawbaugh's first interview with you and the second time he called on you?

A. I cannot say; I never noticed the time between his visits.

Cross-Q. 54. Can you tell whether it was the same season, or, on the other hand, can you say that two or three years might not have elapsed?

A. He may have called on me one month after his first visit, or three months after his first visit. As I said before, I cannot fix the time. It could not have been three years after 1872—the date fixed just previous there, because we had abandoned the shop the latter part of '74 or the beginning of '75.

Cross-Q. 55. What connection is there between your abandonment of the shop and the limitation of the time he may have called on you?

A. You asked me the question whether it was two or three years basing the time of his first visit of 1872.

Cross-Q. 56. Why couldn't he have called upon you after the latter part of '74 or the beginning of '75?

A. I see no reason why.

Cross-Q. 57. Why then did you say: "It could not have been three years after 1872, the date fixed just previous there, because we had abandoned the shop the latter part of '74 or the beginning of '75?"

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A. I have no recollection of Mr. Drawbaugh visiting me at any other time or place than during the time I controlled the shop, at least while in the service of the company--the railway company.

Cross-Q. 58. Can you say that one year could not have elapsed between the time of Mr. Drawbaugh's first interview and the time he next called upon you?

A. I am not positive--don't think it was.

Cross-Q. 59. State what occurred at this second interview; I mean what you recollect as occurring at that interview as distinct from other interviews.

A. I don't remember.

Cross-Q. 60. About what period of time elapsed between that second interview and the third time he called?

A. Don't remember.

Cross-Q. 61. Can you say that a year might not have elapsed?

A. I can say so, but I don't.

Cross-Q. 62. I do not understand you. Do you mean that it is possible that a year might have elapsed, or do you mean to state that a year might not have elapsed?

A. I state now, as I stated before, that I am unable to fix the time between the different visits of Mr. Drawbaugh.

Cross-Q. 63. Is it possible that it might have been a year between his second and third call?

[Objected to as a vain repetition and a mere waste of time.]

A. Yes; it is possible.

Cross-Q. 64. State what occurred at this third interview; I mean what occurred at this interview as distinct from other interviews.

A. Don't remember.

Cross-Q. 65. Can you state positively that Mr. Drawbaugh called on you on more than three different and distinct occasions before the shop mentioned by you was abandoned?

A. Do I understand this question as referring to the time I held the shop, or during the time I was in the service of the railway company?

Cross-Q. 66. The question is by its terms plainly limited to the time prior to when the shop was abandoned.

A. He visited me three times and more, but how many times oftener I cannot state.

Cross-Q. 67. Can you state positively that he visited you on more

than three different and distinct occasions while the shop was running, and before you had abandoned it?

A. He visited me once—his first visit—when I became first acquainted with him; and also again to show me an electric clock; and on another visit, previous to the one last stated, he spoke to me of the clock that operated with the earth-battery; and again on the occasion of his bringing the oscillating magnet spoken of; and at other times, when I gave him scrap; how often, I cannot tell.

[Answer objected to as not responsive.]

Cross-Q. 68. The question repeated.

[Objected to as a vain repetition and fruitless waste of time.]

A. My answer made before is the only one I can give in order to determine his visit, and not from any desire to evade.

Cross-Q. 69. My question is a simple one, and calls for an answer yes or no. Are you or are not able to state positively that he called on you on more than three different and distinct occasions while the shop was running and before it was abandoned?

[Same objection, and the complainants object to the attempt to both frame the question and dictate the form of answer.]

A. I have answered according to my understanding. My detailed answer above shows that he visited me four times of which I have a distinct recollection of the specific visits.

Cross-Q. 70. Are you unable to answer yes or no to my question above stated?

[Same objection, and further that the witness has already fully answered several times over.]

A. I have answered the question in the manner that I have done for the reason that I believe it places me in a true light and does not subject me to misconception.

Cross-Q. 71. Well, what misconception could possibly arise if you answered yes or answered no to the simple question whether you are able to state positively that he called on you on more than three different and distinct occasions while the shop was running and before it was abandoned?

[Same objection.]

A. Either answer would be positive and peremptory both, the answer

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I have already made, according to my understanding, having fully answered the question propounded.

Cross-Q. 72. But what is your objection to a positive answer, and what misconception could possibly arise from such an answer, either yes or no, to that simple question?

[Objected to as simply wasting time in an attempt to budge the witness.

Counsel for defendants states that it is his right to know the reason why the witness is unwilling to give a positive answer to a simple question fully capable of a categorical answer.

Complainants suggest that the witness has already several times given a positive answer and that the controversy between counsel and the witness now seems to be whether the witness shall state his answer in such form as he wishes, or in such form as the counsel for defendants wishes to dictate, and complainants' counsel calls upon the defendants' counsel to proceed with some legitimate cross-examination.]

A. Because I believe the question confines me to specific visits which I am not prepared to testify to. I believe that I have done all in my power to give a plain, fair answer to the question.

Cross-Q. 73. Then, as I understand you at last, you are not prepared to testify positively in answer to the specific terms of my preceding question?

[Question objected to as above, and as a perversion and misstatement of the witness' testimony.]

A. I don't know how you understand me, but I believe I have answered the question in the only manner I can testify, and I must decline to say yes or no, as requested, unless so ordered by the Court—of course that is understood.

Cross-Q. 74. About how long a time elapsed between the third call and the fourth interview you have mentioned?

A. I don't remember.

Cross-Q. 75. Is it possible that a year may have elapsed?

A. It is possible, but I don't remember.

Cross-Q. 76. State what occurred at this last interview mentioned—I mean what you recollect occurring at that interview as distinct from other interviews.

A. Can't say.

Cross-Q. 77. Are you able to recollect the details of what was given to Mr. Drawbaugh from your scrap at any of these calls, or did you leave it to your subordinates to wait upon him?

A. I can not specify the articles; my subordinates had no business to give him anything; if they did it, it was without my knowledge—I do not know whether my subordinates gave him anything or not.

Cross-Q. 78. Is it because it was ten or twelve years ago that you are unable to recollect a single article that you then gave him?

A. I think it was more on the account of the very small value of the articles—their uselessness so far as our service was concerned—and something in accord with the principle, do not let your left hand know what your right hand hath done. I paid very little attention to the quantity or quality—never thought of enumerating them or keeping any record of them.

Cross-Q. 79. You regarded it as a charity to the man, on the principle do not let the left hand know what the right hand hath done?

A. I never considered it a charity. I never would have offered the things as charity. Doing good things should never be spoken of. I gave them out of good feeling, and would do it again if the opportunity occurred.

Cross-Q. 80. As you do not remember what these articles were, or the details of these distinct specific visits, can you recall the number of articles you gave him?

A. I understood your first question to mean a list of all the articles I gave him. I remember distinctly on one occasion—but what visit or at what particular time I cannot tell—that I gave him some battery material, notably some porous cells, such as are used in the "Grove" and "Electro-poion" batteries. This was during the time I held the shop.

Cross-Q. 81. Do you remember whether he asked you for the gift of some soft iron cores for magnets, or whether you gave him any?

A. I can't state positively; but my recollection is that we spoke on the subject of soft iron cores, of which I had a number in the shop. I cannot say whether I gave him any or not.

Re-direct examination by Mr. Storrow;

Q. Q. 82. Who was the president of the Northern Central railroad while you were superintendent of telegraphs?

[*Objected to, because the subject was not inquired into on cross-examination, and also because irrelevant and immaterial.*]

A. J. D. Cameron.

Q. Q. 83. Who was the principal manager at Harrisburg, next to him?

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[*Same objections.*]

A. J. N. DuBarry; a part of my term, he was general superintendent, and during the balance was vice president.

Q. Q. 84. Is he the gentleman of that name who afterwards became vice president of the Pennsylvania railroad?

[*Same objection.*]

A. Yes, sir.

Q. Q. 85. Were you on intimate personal relations with those two gentlemen, or were your relations only official?

[*Same objection, and also because leading.*]

A. They were both official and friendly.

Q. Q. 86. Would you have had any difficulty in getting those gentlemen to have furnished means if you had shown them a practical and successful operative electric speaking-telephone, in 1873 for example?

[*Same objections, and also because hypothetical and calling for mere inferences on the part of the witness, and clearly immaterial and incompetent and remote.*]

[*Complainants' counsel suggests that Harrisburg and the year 1873 are not so remote as the time and place referred to in the deposition of McHenry.*]

A. I don't believe I would. When they came to understand the invention, I feel satisfied they would have gone into it.

Q. Q. 87. What is your full name?

A. Simon Cameron Wilson.

Q. Q. 88. Mr. Daniel Drawbaugh has been present in the room during your cross examination, has he not?

A. Yes, sir.

Examination taken, reduced to
writing, and by the witness sworn
to and subscribed before me, this
7th day of May, 1884.

JOSHUA R. MORGAN,
Notary Public, Special Examiner.

S. C. WILSON.

MARTIN BEST, a witness produced, sworn, and examined, deposes and says as follows:

Examined by Mr. Storrow:

Q. 1. What is your name, age, residence, and occupation?

A. Martin Best; I will be sixty-three July 31st; Cumberland county, Lower Allen township; farmer.

Q. 2. A certain house in Lower Allen, about a mile from Eberly's Mills, and near the Gorgas farm, has been referred to as Martin Best's tenant-house; are you the Martin Best, and is that one of your houses?

A. Yes.

Q. 3. Which direction is that from Eberly's Mills?

A. North-west—it lays north-west.

Q. 4. Did Joseph Orris ever live in that house; and if so, when did he move into it, and when did he leave it? If you have here your account-book containing your account with him, will you please produce it and refer to it in making your answer?

A. Well, he moved into the house the 9th of September, 1869, and moved out the latter part of March or the early part of April, 1874—or the first of April, 1874. I see that I received the rent, anyhow, for 1873 on the 31st of December, 1873, and that was the settlement we made on the 31st of December.

Q. 5. Who lived in that house next after him?

A. Mr. Condry—D. B. Condry.

Q. 6. How long did he live in the house, and when did he leave it?

A. He lived one year, and left it in '76—no '75—"March 22d, '75, to rent, thirty-five dollars."

Q. 7. Who occupied the house next?

A. Mr. John Kahney.

Q. 8. When did he move in?

A. Orris left in the April of '74; Condry came in then. Kahney came in after Condry, '75; this is coming—now it is right; now you want to know how long Kahney lived there?

[Complainants' counsel says no. I asked you when he came there.]

Oh, '75.

Q. 9. Where did Joseph Orris move to when he left your tenant-house in the spring of '74?

A. To Robert Baskins' house, on Johnny Black's farm—it used to be.

Q. 10. Is that near Etter & Shanklin's mill?

A. Well, it is upwards of a mile, as near as I could judge.

Q. 11. Is it below the mill; that is nearer the Susquehanna river than the mill is?

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A. Yes, sir.

[*Cross-examination declined.*]

Examination taken, reduced to
writing, and by the witness sworn
to and subscribed before me, this
7th day of May, 1884.

MARTIN BEST.

JOSHUA R. MORGAN,
Notary Public, Special Examiner.

Adjourned to May 8, 1884, at 10 o'clock.

MAY 8th, 1884, at 10 o'clock.

Examination resumed, pursuant to adjournment.

Present, Mr. Storrow for complainants, and Mr. Church, Mr. Jacobs,
and Mr. Dixon for defendants.

CALVIN ETTER, *being produced, sworn, and examined, saith :*

Examined by Mr. Storrow:

Q. 1. State your name, age, residence, and occupation.

A. Calvin Etter; grocer and feed business; milling business connected with that of grocer; forty-eight last December; Harrisburg.

Q. 2. Are you the Mr. Etter of the firm of Etter & Shanklin, owners of the grist-mill on the Yellowbreeches next below Milltown, in Lower Allen township?

A. Yes, sir; Mr. Shanklin is dead now, and I carry on the mill alone. Mr. Shanklin's estate owns half of the mill property, though.

Q. 3. When did you and Mr. Shanklin buy that mill, and from whom; if you have with you the deed will you please produce it, and refer to its date?

A. Sixth of February, 1871; from John H. Teahl; the date of the deed is the sixth of February, 1871.

Q. 4. Who had been carrying on the mill before you bought it, or before you began carrying it on?

A. John H. Teahl.

Q. 5. Did he have anybody associated with him?

A. We had it on a rental from September, '70, up to February 6th, '71, before we bought it, and he was a partner with us during that time in carrying it on.

Q. 6. Did he continue milling there in any capacity after you bought it, February 6th, '71; and if so, how long?

A. He was there about a month or six weeks after we bought it.

Q. 7. Has he ever milled there since?

A. No, sir.

Q. 8. Who became your miller at the time he quit?

A. George W. Engle—Engle was there before he quit; Teahl didn't do any of the milling—he was there as superintendent that leugh of time after we bought it.

Q. 9. If you have here the day-book kept at the mill during that time will you please produce it, and point out and state at what time Teahl's handwriting ceased and Engle's began?

[*Objected to as immaterial and incompetent, and also because no foundation has been laid for the question.*]

A. The date, apparently, there is the first of March, '71; here is Engle's first handwriting, the seventh of March; it is the next entry to the one in Engle's handwriting after that which I have just spoken of.

Q. 10. Are there any entries in your handwriting on the same page as the two just mentioned?

[*Same objection.*]

A. Yes, sir.

Q. 11. Is the book just referred to and produced the property of your firm and the regular account book kept at the mill?

[*Same objection, and also as leading.*]

A. Yes, sir.

Q. 12. Were these entries in your handwriting on that page made at or about the time of that date, and in the usual course of business?

[*Same objection.*]

A. Yes, sir.

Q. 13. Where was Mr. Teahl living at the time you made this purchase in February, 1871?

A. Harrisburg, sir.

Q. 14. How long did he continue to live in Harrisburg after that, and where did he move to then?

[*Objected to as immaterial.*]

A. I could'n't tell the exact time; he left Harrisburg before his family did and came to Philadelphia.

Q. 15. About how long after the sale of the mill was this?

[*Same objection.*]

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A. Why I couldn't, well—about six weeks or a month.

Q. 16. How long did his family remain in Harrisburg, about ?

[*Same objection.*]

A. I couldn't tell you exactly, sir. They moved out some time that summer—the forepart of the summer ; I could not say exactly when.

Q. 17. Did he ever come back to live in Harrisburg, or that part of the country ?

[*Same objection.*]

A. No, sir.

Q. 18. Is he living now ; and if not, when did he die ?

[*Same objection.*]

A. No, sir ; not living. He died last summer.

Q. 19. Mr. Jesse Eicholtz whose deposition is printed in defendants' sur-rebuttal record, page 2153, 7th answer, testified that on the 6th of November, 1873, John Teahl was milling at what he called Teahl's mill. Was John Teahl milling for you at that mill in November, 1873 ?

[*Objected to as immaterial and too remote for the purposes of contradiction.*]

Complainants' counsel calls attention to the fact that the statement of Eicholtz was in his direct examination, and was unobjected to by either party, and was stated as one of the occurrences on the visit which he was called to testify about.]

A. No, sir.

Q. 20. Was there any mill between between Eberly's mill and Harrisburg, or in that neighborhood, called Teahl's mill, except the one you have referred to and testified about ?

A. No, sir.

[*The foregoing deposition is objected to as immaterial and remote.*]

Cross-examination declined.

Examination taken, reduced to
writing, and by the witness sworn
to and subscribed before me, this
8th day of May, 1884.

JOSHUA R. MORGAN,
Notary Public, Special Examiner.

CALVIN ETTER.

REBECCA ORRIS, *being produced, sworn, and examined, saith:*

Examined by Mr. Storrow:

Q. 1. Are you the wife of Joseph Orris, and where do you reside?

A. Yes, sir; we live in York county, near Dover.

Q. 2. Did you at one time live in the Baskins tenant-house, about a mile from the Etter & Shanklin's mill, Lower Allen, Cumberland county?

[*Objected to as leading.*]

A. Yes, sir.

Q. 3. Whose house did you live in last before that?

A. Best's—Martin Best's.

Q. 4. When did you move from the Best house to the Baskins house?

A. Why, in '69.

Q. 5. I think you misunderstood the question; I want to know when you moved away from the Best house and into the Baskins house?

A. Why, in '74.

Q. 6. Do you know James Shaffer?

A. Yes, sir.

Q. 7. Will you point out on the map at the end of complainants exhibits, volume three, where the Baskins tenant-house you lived in is?

A. The witness puts her finger on the map at the place marked "J. Flickinger," eastwardly from Etter and Shanklin's mill.

Q. 8. Will you point out on the map where is the Martin Best house in which you lived?

[She puts her finger on the map at the place marked "M. Best," at the corner of a lane, near the fork of a run.]

[*The Examiner is requested to certify that he finds upon the map referred to, on the Cumberland side of the Yellowbreeches creek, four houses marked "M. Best," and he so certifies.*]

Cross-examined, by Mr. Jacobs:

Cross-Q. 9. Where did you first see this little map, or any map similar to it?

A. This morning is the first I saw it; yes, sir.

Cross-Q. 10. Who showed it to you?

A. This gentleman here, [pointing to Mr. Storrow.]

Cross-Q. 11. That was before you came into this room to testify, I suppose, was it not?

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A. Yes, sir.

Cross-Q. 12. Did you have any assistance in finding the locations on the map, which you have pointed out, or did you find them yourself without any assistance?

A. Yes, sir; no, sir, I didn't find it myself.

Examination taken, reduced to writing, and by the witness subscribed to, by touching the pen, as she did not know how to write, before me, May 8, 1884.

her
REBECCA X ORRIS.
mark.

JOSHUA R. MORGAN,

Notary Public, Special Examiner.

[Complainants offer to prove that the oldest son of Mr. Daniel Drawbaugh, during any part of the period since 1867, was Harry W. S. Drawbaugh, born October 18, 1867, and died December 25th, 1881.

The defendants admit the fact to be as stated, but object as to the competency, materiality, and relevancy of the fact, and especially in rejoinder.

Complainants put in evidence the following papers:

STATE OF PENNSYLVANIA, } ss:
County of Cumberland, }

I, D. B. Saxton, Clerk of the Court of Quarter Sessions in and for said State and County, do hereby certify that Ezekiel Worley was elected Supervisor of Lower Allen Township for the year 1879. That no record is made of the "Election Returns" for the year 1871. That the aforesaid Ezekiel Worley was not elected a Supervisor of said Township for the years 1870, 1872, 1873, 1874, 1875, 1876, 1877, 1878, and 1880, as per the record of said proceedings in the Office of the Clerk of the Court of Quarter Sessions in and for said State and County.

In testimony whereof, I have hereunto set my hand and seal of said Court at Carlisle, Pa., this 29th day of April, A. D. 1884.

D. B. SAXTON,
Clerk Court Quarter Sessions.

STATE OF PENNSYLVANIA, } ss:
County of Cumberland, }

I, D. H. Saxton, Clerk of the Court of Quarter Sessions in and for said State and County do hereby certify that H. M. Bitner was elected Supervisor of Lower Allen Township for the year 1873. That the record of the said return is made "H." Bitner. That no record is made of the "Election Returns" for the year 1871.

That the aforesaid H. M. Bitner was not elected a Supervisor of said Township for the years 1870, 1872, 1874, 1875, 1876, 1877, 1878, 1879,

or 1880. As per the Record of said proceedings in the Office of the Clerk of the Court of Quarter Sessions.

In Testimony Whereof I have hereunto set my hand and seal of said Court at Carlisle, Pa., this 29th day of April, 1884.

D. B. SAXTON,
Clerk Court Quarter Sessions.

STATE OF PENNSYLVANIA, }
County of Cumberland, } ss:

I, D. B. Saxton, Clerk of the Court of Quarter Sessions in and for said State and county, do hereby certify that Jacob Eshelman was elected Supervisor of Lower Allen Township for the years 1873, 1875, and 1876. That no record is made of the "Election Returns" for the year 1871.

That the aforesaid Eshelman was not elected Supervisor of said township in the years 1870, 1872, 1874, 1877, 1878, 1879, or 1880.

As per the record of said proceedings in the office of the Clerk of Quarter Sessions.

In testimony whereof, I have hereunto set my hand and seal of said Court, at Carlisle, Pa., this 29th day of April, 1884.

D. B. SAXTON,
Clerk Court Quarter Sessions.

STATE OF PENNSYLVANIA, }
County of Cumberland, } ss:

I, D. B. Saxton, Clerk of the Court of Quarter Sessions in and for said State and County, do certify that Daniel Weaver was elected Supervisor of Lower Allen Township for the years 1875 and 1878. That no record is made of the "Election Returns" for the year 1871. That the aforesaid Daniel Weaver was not elected a Supervisor of said Township for the years 1870, 1872, 1873, 1874, 1876, 1877, 1879, and 1880. As per the record of said proceedings in the office of the Clerk of the Court of Quarter Sessions in and for said State and County.

In testimony whereof, I have hereunto set my hand and seal of said Court, at Carlisle, Pa., this 29th day of April, A. D. 1884.

D. B. SAXTON,
Clerk Court Quarter Sessions.

[*The above papers objected to by counsel for defendants ; first, because they are not properly attested and certified according to law ; and secondly, because they do not purport to contain copies of any record, or parts of any record, of the Court of Quarter Sessions of Cumberland county, but merely state the inferences and conclusions of the clerk of said Court.*

The paper referring to H. M. Bitner is further objected to because upon

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its face it purports to state facts which do not appear in the alleged record to which it refers. Inasmuch as counsel for complainants sought to introduce evidence as to who were the supervisors on the Cumberland county side of the Yellowbreeches creek, but have not apparently made the slightest effort to show who were the supervisors on the York county side of the creek, counsel for defendants requests the Examiner to spread upon the record the following clipping from the York Press, published at York, Pa., and containing, under the title of school and township accounts, the official report of the auditors in relation to the work done during the year ending 14th of April, 1874, in Fairview township, under the direction of Adam Baker and Charles Sweeney, supervisors for that year, to wit:

School and Township Accounts.

Supervisor's Account of Fairview Township.

Chas. Sweeney, Supervisor, in Account with Fairview township.

Cr.

Amount of duplicate,	\$896.97
Amount received of former supervisors,	278.55

\$1,175.52

Cr.

By amount of work done on the road,	\$813.87
By supr. days and per cent. for collection,	168.59
Error of last year,	3.00
Auditor's pay and boarding,	6.80
House two days,	3.00
House for holding election,	4.00
Paid over to Adam Baker,	105.01
Balance due,	71.25

\$1,175.52

Adam Baker, Supervisor, in Account with Fairview township.

Dr.

Amount of duplicate,	\$738 90
Amount received of former Supervisor,	194 97

\$933 87

Amount received,	105 01
------------------	--------

\$1,038 88

Cr.

Amount of work done on the roads,	\$875 94
Supervisor's days, 83½, at \$1 50 per day,	125 25

SCHOOL AND TOWNSHIP ACCOUNTS.

2081

Collecting and settling duplicate,	\$36 94
Exonerations,	10 75
	<hr/>
	\$1,038 88

Audited and approved this 14th day of April, 1874.

HENRY ATTICK,
COSMOS CLENDENIN, } Auditors.
J. K. LUTES,

June 26, '74.

[Complainants' counsel replies that the alleged newspaper extract is at least as far from being authentic proof, according to law, as the papers just previously presented; that it has already appeared that the defendants did make effort to obtain testimony from the supervisors and their books about the bridges, summoned many of them to Harrisburg, and did not put them on the witness-stand; that it already appears that Charles Sweeney was the supervisor on the York side during 1873, and that Adam Baker was the supervisor on the York side during 1875, and other years. Complainants' counsel also states that it is well known, and that he thinks it has appeared in proof, that Charles Sweeney died several years ago; that he has personally visited Adam Baker, but that Mr. Baker's age and infirmities render it, in the judgment of counsel, unsuitable to call him as a witness, and that counsel have not called him for that reason only.

Counsel for defendants reply that the statement of counsel in regard to the calling of the supervisors in behalf of the defendants is somewhat exaggerated. only two of them, namely, Jacob Eshelman and Daniel Weaver, having been called to Harrisburg with a view of taking their testimony as to the flood of 1873, and neither of them having any distinct recollection of that flood, they were not put upon the stand, there being other and positive proof of that flood at hand, as the record shows, and as counsel for complainants have admitted on the record. Furthermore, however good the reason of counsel for complainants may have been, or may be, for not calling Adam Baker, the supervisor of Fairview township, York county, in 1873, it is very patent that the same attempt might have been made by counsel for complainants to show the years that said Baker was supervisor by means of certificates each, as have been offered in evidence by them in respect to the supervisors on the Cumberland side.

Complainants call attention to the fact that Daniel Weaver testified that

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he remembered that there was a flood in 1873, and at least one other year, and refers to pages 1924, and 1925.]

Recess until 2 o'clock, P. M.

2 o'clock, P. M.

Examination resumed.

Present, counsel as before.

JOHN McALLISTER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Storrow:

Q. 1. What is your name, age, residence, and occupation?

A. John McAllister; going on fifty-three; one mile from Martinsburg, West Virginia; farming.

Q. 2. Where did you live in the year 1875?

A. Why, at Hyman Lonecker's; in the spring.

Q. 3. What time in the spring did you move to his place?

A. First of April.

Q. 4. Where had you lived last before that?

A. Why, at Boiling Springs.

Q. 5. When did you move to Boiling Springs?

A. In '74—the fall of '74.

Q. 6. Where had you lived last before that?

A. In Lebanon county.

Q. 7. About how long had you lived in Lebanon county?

A. Well, I moved to Lebanon in '72, and lived there till the fall of '74.

Q. 8. You say you moved to Hyman Lonecker's about the first of April, '75. How long did you stay there, and where did you move to next?

A. Why, Hyman Lonecker and I disagreed, and I moved to Adam Zinn's the first of June, '75.

Q. 9. Which house of Adam Zinn's, and how near the mill called the clover-mill, was it?

A. Well, the house right on the hill near the clover-mill.

Q. 10. Was there any house between that and the clover-mill?

A. No, sir.

Q. 11. When did you move away from Adam Zinn's house?

A. In '76.

Q. 12. What time in '76?

A. First of April.

Q. 13. When you moved away from Adam Zinn's, first of April, '76, where did you move to?

A. On the Milton Stayman farm.

Q. 14. What township is that farm in?

A. Hampden.

Q. 15. How long did you stay on Milton Stayman's farm before you moved?

A. Four years.

Q. 16. Where did you move to then?

A. To Silver Spring township.

Q. 17. How long did you stay there?

A. Till the spring of '80.

Q. 18. Where did you move to then?

A. To Silver Spring.

Q. 19. When did you move to Silver Spring?

A. In 1880.

Q. 20. When did you move away from Silver Spring?

A. In '81.

Q. 21. Where did you move to then?

A. Back on the Stayman farm.

Q. 22. How long did you stay on the Stayman farm that time?

[*This and all other questions in this line of examination objected to as immaterial, irrelevant, and incompetent.*]

A. Till the spring of '82.

Q. 23. When you left the Stayman farm, the spring of '82, where did you move?

[*Same objection.*]

A. Boiling Springs.

Q. 24. How long did you live there?

[*Same objection.*]

A. Till the spring of '83.

Q. 25. Where did you move to then?

[*Same objection.*]

A. To West Virginia.

Q. 26. You testified that you lived in Adam Zinn's house from the first of June, '75, to the first of April, 1876. While you lived there

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during that time, did you do any work about the foot-bridge across the Yellowbreeches at Zinn's clover-mill?

[This and all other questions relating to the floods and bridges along the Yellowbreeches, and the circumstances thereof, objected to as incompetent evidence in rejoinder, the subject having been embraced and the ground covered in the evidence taken by the complainants in their reply.]

Complainants' counsel reply that defendants introduced a large amount of evidence, cumulative in its character, on these topics, in their so-called sur-rebuttal; and the testimony of the witness is, moreover, directed to specific statements introduced by the defendants in their so-called sur-rebuttal.]

A. Yes.

Q. 27. About how soon after you moved to Zinn's did you do this work on the foot-bridge?

[Same objection.]

A. On the tenth.

Q. 28. Tenth of what?

A. Tenth of June.

Q. 29. What kind of work did you do on this foot-bridge at that time?

[Same objection.]

A. Well, I prepared to put the logs up.

Q. 30. How long did you work there?

[Same objection.]

A. One day.

Q. 31. Who came to you and got you to work there?

[Same objection.]

A. The supervisor.

Q. 32. What was his name?

[Same objection.]

A. Daniel Weaver.

Q. 33. Name some of the others that worked on the bridge job the day you worked there.

[Same objection.]

A. James Shaffer.

Q. 34. Name the rest of them that you remember.

[*Same objection.*]

A. Mr. John Umberger, Louis Umberger, William Umberger, Isaac Gray, and Greenfield—carpenter.

Q. 35. Who was the boss carpenter?

[*Same objection.*]

A. Why, Greenfield.

Q. 36. Do you remember any other carpenter that worked there that day?

[*Same objection.*]

A. No, I don't.

Q. 37. Do you know David Smith, and do you remember whether he worked there?

[*Same objection; also, because under the circumstances clearly leading.*]

A. Oh, yes; he worked there.

Q. 38. Do you remember an incident of Isaac Gray getting wet; and if so, what do you remember about it?

[*Last objection repeated.*]

A. Yes, sir; they ducked him in the creek.

Q. 39. Do you remember who it was that ducked him?

[*Same objection.*]

A. Jim Shaffer.

Q. 40. Do you remember whether Shaffer was working for anybody at that time?

[*Objection to question 26 repeated.*]

A. Adam Henry Zinn.

[*Answer objected to by the defendants as not responsive.*]

Q. 41. How do you know he was working for Adam Henry Zinn?

[*Objection to question 37 repeated.*]

A. Well, I lived there in the house, and Adam Henry Zinn told me he had him employed.

[*Last part of answer objected to by defendants as mere hearsay.*]

Cross-examined, as de bene esse, by Mr. Church:

Cross-Q. 42. You have mentioned the names of a number of persons

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whom you say worked upon the clover-mill bridge in 1875; have you lately seen and talked with any of the persons you have named?

A. No, sir.

Cross-Q. 43. Have you read any of the testimony given in this case?

A. No.

Cross-Q. 44. Has any one told you what has been testified in this case by any one?

A. No.

Cross-Q. 45. Who first came to see you about this case?

A. Isaac Baker.

Cross-Q. 46. Where were you at that time?

A. Virginia.

Cross-Q. 47. What did Baker say to you?

A. Baker just said he came to see me about this foot-bridge.

Cross-Q. 48. When was this?

A. It was in last March.

Cross-Q. 49. How did he say he came to know you had anything to do with repairing that bridge?

A. Why, he just asked me whether I didn't work at it.

Cross-Q. 50. Question repeated.

A. Well, that is all he asked me.

Cross-Q. 51. I didn't inquire what he asked you; what I want to know is what reason did he give for coming up to see you, and how did he say he had found out that you had worked on that bridge?

A. He gave me no reason, and did not say.

Cross-Q. 52. Did he ask you if you had worked on that bridge in 1875?

[Question objected to as ambiguous and designed to convey one meaning to witness and a different one to the Court.]

A. Yes.

Cross-Q. 53. Did he mention the names of any of the others who had worked on that bridge at that time?

A. No, sir.

Cross-Q. 54. Did he call attention to the circumstance about Isaac Gray getting wet?

A. Yes, sir.

Cross-Q. 55. Did he call attention to the fact that John Greenfield was the boss carpenter of that job?

A. No, sir.

Cross-Q. 56. You remembered that, then, independently, didn't you?

A. I did; yes, sir.

Cross-Q. 57. How many times did Baker come to see you?

A. Only once.

Cross-Q. 58. Did anybody else come to see you besides him in regard to this case?

A. No, sir.

Cross-Q. 59. Did you come from your home directly to Philadelphia?

A. Yes, sir.

Cross-Q. 60. Who came down with you?

A. Mr. Baker.

Cross-Q. 61. Who met you when you arrived here?

A. No one.

Cross-Q. 62. Do you know John Comfort?

A. I never had no acquaintance with him until the morning I came.

Cross-Q. 63. How often have you talked with John Comfort since you came down to Philadelphia?

A. I haven't talked with him at all.

Cross-Q. 64. When did you arrive in town, and where did you stop?

A. I arrived here at half past three o'clock in the morning—Tuesday morning. I asked Comfort at the depot what time it was, and he looked at his watch and said half past three o'clock.

Cross-Q. 65. Comfort, then, did meet you at the depot; is that not so?

A. Well, he couldn't meet me at the depot when we came down together—not Comfort. I didn't say Comfort—I said Isaac Baker and I came down together.

Cross-Q. 66. Both Comfort and Baker were on the cars with you, were they not, when you came into the depot?

A. No, sir.

Cross-Q. 68. How came he to be at the depot when you arrived?

A. Comfort? He was not there.

Cross-Q. 69. How long have you known Isaac Baker?

A. Never knew the man or spoke to him until he came out to see me.

Cross-Q. 70. Where does he live?

A. I don't know—never was at his place—know nothing about him.

Cross-Q. 71. Lives in Pennsylvania, don't he?

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A. Yes, sir.

Cross-Q. 72. What part of Pennsylvania?

A. I don't know; I can't tell his township or where he does live.

Cross-Q. 73. What county does he live in?

A. Cumberland.

Cross-Q. 74. What township?

A. I don't know what township.

Cross-Q. 75. Tell me as nearly as you can.

[Objected to, as the witness has twice stated he does not know the township and the question is simply absurd.]

A. Well, in the first place, when you asked me what county he lived in I said in Cumberland, and he lives in York county. I have told you as nearly as I can; I don't know.

Cross-Q. 76. Does he live in the upper, or lower part of York county?

A. I don't know.

Cross-Q. 77. State as nearly as you can how far from the Zinn's clover-mill bridge—about which you have testified—he lives.

A. I don't know how near it is—the distance at all.

Cross-Q. 78. Did he live in York county at the time you say you lived at Zinn's?

[Objected to in view of the 69th answer.]

A. I don't know.

Cross-Q. 79. Is the father of Isaac Baker named Adam Baker?

A. I do not know.

Cross-Q. 80. Mention the names of any of the residents of York or of Cumberland county who lived there when you lived at Zinn's.

A. Jacob Mosher, John Umberger.

Cross-Q. 81. Any one else?

A. Old Adam Zinn.

Cross-Q. 82. Any one else?

A. Mr. Hess; that is, in York county.

Cross-Q. 83. Is that all?

A. That is all that I am acquainted with.

Cross-Q. 84. How long did you live at Zinn's?

A. Till the spring of '60.

Cross-Q. 85. What did you do there?

A. I made a mistake in the date—it should have been '76.

Cross-Q. 86. How late in '76 did you live there?

A. I left there in the spring of '76.

Cross-Q. 87. What work were you engaged upon while you were there?

A. Days' work—laboring.

Cross-Q. 88. Have you any trade?

A. No, sir.

Cross-Q. 89. What did you do there?

A. Well, I worked day's work by the day.

Cross-Q. 90. What kind of work did you do?

A. Well, haymaking and harvest.

Cross-Q. 91. Anything else—any other kind of work but that?

A. I done some ditching.

Cross-Q. 92. That all?

A. Yes, sir.

Cross-Q. 93. Who did you work for?

A. Adam Zinn.

Cross-Q. 94. Did you do any work for anybody else while you lived at Zinn's?

A. Yes, sir; for Jacob Mosher.

Cross-Q. 95. Any one else?

A. Henry D. Mosher.

Cross-Q. 96. Is that all?

A. Worked for Levi Herring.

Cross-Q. 97. Mention the names of any others that you have not given that you worked for.

A. That is all.

Cross-Q. 98. What did you do for Jacob Mosher?

A. Haymaking and harvesting.

Cross-Q. 99. Who worked with you at that time?

A. Jacob Collins. That is all the names that I know, of the hands that were there.

Cross-Q. 100. You mean you don't remember the names of the other hands that were there?

A. Yes.

Cross-Q. 101. Who helped you when you worked at Levi Herring's, and what work did you do there?

A. I was quarrying stone. The stone was for Henry Mosher. Nobody but myself.

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Cross-Q. 102. On what other job did you work in connection with a number of others while you lived at Zinn's?

A. Well, I was quarrying stone for Henry Mosher again.

Cross-Q. 103. How many others worked on that job with you?

A. My son.

Cross-Q. 104. Any one else?

A. No, sir.

Cross-Q. 105. Did your son help you on the bridge job?

A. No, sir.

Cross-Q. 106. The Mosheres and Herrings all live on the York county side, don't they?

A. Yes, sir.

Cross-Q. 107. That is in Fairview township, isn't it?

A. I don't know what the township is.

Cross-Q. 108. Who is the Daniel Weaver you referred to as having assisted at that bridge work?

A. Daniel Weaver. Well, that is all I know about the man.

Cross-Q. 109. Where did he live?

A. In Cumberland county.

Cross-Q. 110. What sort of a looking man is Daniel Weaver?

A. Why, he is a white man, of course.

Cross-Q. 111. Short or tall?

A. Well, he is—I don't what his height might be.

Cross-Q. 112. I didn't ask you to give his exact height; but I want to know whether he appeared to you to be a short or a tall man.

A. He is a medium-sized man.

Cross-Q. 113. Was he a young or an old man?

A. Well, he is—I don't know his age. He is a man, as near as I can tell, of fifty.

Cross-Q. 114. Do you remember how he wore his whiskers?

A. I do not.

Cross-Q. 115. Do you remember whether he wore any or not?

A. I do not.

Cross-Q. 116. Give us an idea of David Smith's appearance. Describe him as best you can.

A. I took no particular notice to him. I don't remember whether he was a tall man or a short man.

Cross-Q. 117. How many times did you ever see him?

A. I never saw him until that day.

Cross-Q. 118. At the time you assisted him to repair that bridge, it was all down, wasn't it?

A. Yes, sir.

Cross-Q. 119. And how long did it take you to get it all up?

A. One day.

Cross-Q. 120. Were you working for Zinn at the time?

A. No, sir.

Cross-Q. 121. Who paid you for what you did?

A. The supervisor.

Cross-Q. 122. What was his name?

A. Daniel Weaver.

Cross-Q. 123. How much did he pay you?

A. A dollar and a quarter.

Cross-Q. 124. You have referred to a little incident connected with the repairing of that bridge, about Jim Shaffer ducking Isaac Gray in the creek. Please state all you remember about that incident.

A. Well, that is about all I remember. They put him in the water. Jim Shaffer helped to do it.

Cross-Q. 125. Are you sure it was not Jim Shaffer who was ducked by Isaac Gray?

A. I am not.

Cross-Q. 126. What work was Jim Shaffer, engaged at, at the time this incident occurred?

A. Helping to put the logs up.

Cross-Q. 127. Well, who was it that managed the team in hauling the logs?

A. Why, James Shaffer.

Cross-Q. 128. Sure of that, are you?

A. Yes, sir.

Cross-Q. 129. Did Daniel Weaver or John Greenfield furnish the team?

A. Well, I don't remember.

Cross-Q. 130. What is your impression about it?

[*Objected to as asking for guess-work.*]

A. I don't remember which of the men the team was, or who furnished the team.

Cross-Q. 131. Did Jim Shaffer ever work with you on any other job than this one of rebuilding the bridge?

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A. Not more than in haymaking and harvesting for Zinn we worked together.

Cross-Q. 132. While you were working on the bridge, do you remember about Adam Baker, the supervisor on the York county side, coming down there and looking at the job?

A. I do not.

Cross-Q. 133. Do you know whether or not Adam Baker was supervisor on the York county side at that time?

A. I don't remember.

Cross-Q. 134. Did you do any work on roads or bridges on the York county side while you lived there at Zinn's?

A. No, sir.

Cross-Q. 135. Tell me what kind of materials were employed in the rebuilding of that bridge; that is, old or new materials.

A. They were the old logs.

Cross-Q. 136. Do you mean that it was built entirely of old materials?

A. No; some of the trestles were new.

Cross-Q. 137. Was the flooring old or new?

A. New boards.

Cross-Q. 138. What quantity of new boards were employed on that flooring?—state as near as you can.

A. I couldn't be able to tell the amount of feet at all. I didn't hear them say.

Cross-Q. 139. Would you judge there was one, or more than one wagon-load used?

[Objected to as asking for guess-work.]

A. No, sir; I wouldn't like to say.

Cross-Q. 140. David Smith, a witness produced by the complainants in this cause, has testified in substance that at least one of the logs or stretchers which were built into that bridge was of new timber, and purchased in New Cumberland; do you remember which side of the bridge that new timber was put in?

[Objected to as exactly contrary in substance to David Smith's testimony.]

Counsel for complainants is referred to direct questions and answers from 14 to 18 inclusive, and cross-questions and answers 82 to 87 inclusive, in the deposition of David Smith, and to cross-question and answer 28 in the deposition of William Umberger.

Complainants' counsel replies that it is precisely because of those answers

and of the 38th answer in Smith's deposition that he objects to the question as a misstatement of the substance of Smith's testimony, and that the passage in Umberger's deposition referred to contains simply a blinding and misleading statement by the cross-examining counsel, and does not contain any statement by the witness that any new stretchers were procured; on the contrary the defendants' counsel did not ask the question whether new stretchers were procured, nor direct the mind of the witness to that question.

Counsel for defendants requests the Examiner to set down as his reply to the above remarks of counsel for complainants cross-questions and answers from 26 to 28, inclusive, of William Umberger, which are as follows :

"Cross-Q. 26. State as nearly as you can the length of the string-pieces or stretchers that were used in repairing that bridge ?

[Same objection.]

A. About fifty feet, as near as I can recollect.

Cross-Q. 27. You are not positive about the number that were used, if I understand you ?

[Same objection, and because it is indefinite and ambiguous.]

A. Not the number of new ones.

Cross-Q. 28. Who brought the new string pieces or stretchers from New Cumberland ?

A. Daniel Weaver's team hauled them."

[Complainants' counsel requests the Examiner to add cross-questions and answers 24 and 25, which are as follows :]

"Cross-Q. 24. How many new string pieces or stretchers, if any, were put in ?

A. I don't remember.

Cross Q. 25. Give your best recollection.

[Objected to as asking for guess-work, and as immaterial.]

A. I can't recall what particular timber was used in the bridge."

[Before the witness could testify Mr. Storrow, counsel for complainants, instructs the witness that Mr. Smith did not testify that new stretchers were put in the bridge.

The last remarks of counsel for complainants objected to as misstating Mr. Smith's evidence, and inferentially the evidence of William Umberger also, and further as an unwarranted interference with the cross-examination of this witness.]

A. I don't remember of any new timber stretchers.

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Cross-Q. 141. Where were the old portions of the bridge when the men set about to collect them?

A. I know nothing about it.

Cross-Q. 142. How do you know, then, that any of the timbers of the old bridge were employed in the construction of the new one?

A. Well, allow me to say this: they hauled those logs together, and where they were carried by the water I know not.

Cross-Q. 143. You are not, then, able to state of your own knowledge where the logs were hauled from, are you?

A. No, sir.

Cross-Q. 144. Where was James Shaffer at work, and what was he doing when called to assist in rebuilding that bridge?

A. He was working for Adam Henry Zinn. I am not able to tell what he was doing.

Cross-Q. 145. From what circumstance are you able to state so accurately the exact dates when you went to live at Zinn's and when you left there?

A. I went to Zinn's in '75, and left in the spring of '76.

Cross-Q. 146. How do you know it was the spring of '75 you went there?

A. Because it was in '75 that I moved there.

Cross-Q. 147. Has your memory been refreshed by any one in regard to the time you were living at Zinn's?

A. Not at all, sir.

Cross-Q. 148. Do you know when James Shaffer left Zinn's?

A. I do not.

Cross-Q. 149. Do you know when he went to Zinn's?

A. He was there when I moved there in the house.

Cross-Q. 150. Did you go to the Centennial Exposition held here in Philadelphia?

A. No, sir.

Cross-Q. 151. Where did you live at that time?

A. I lived on the Stayman farm.

Re-direct examination by Mr. Storrow:

Q. Q. 152. What did you do on the Stayman farm?

A. I done the farming.

Q. Q. 153. Did you carry it on on your own account or did you do it for Mr. Stayman?

DEPOSITION OF BENJ. FRANKLIN ZIMMERMAN. 2095

A. For Mr. Stayman.

Examination taken, reduced to
writing, and by the witness affirmed
to, and subscribed to by a touching of
the pen, before me, this 8th day of
May, A. D. 1884.

JOSHUA R. MORGAN,
Notary Public, Special Examiner.

his
JOHN X McALLISTER.
mark.

Adjourned to May 9, 1884, 10 o'clock, A. M.

MAY 9, 1884, 10 o'clock, A. M.

Examination resumed.

Present, Mr. Storrow for complainants, and Mr. Church, Mr. Jacobs,
and Mr. Dixon for defendants.

BENJAMIN FRANKLIN ZIMMERMAN, *being produced, affirmed, and ex-
amined, saith:*

Examined by Mr. Storrow:

Q. 1. State your name, age, residence, and occupation.

A. Benjamin Franklin Zimmerman; twenty-seven; Elliottsburg,
Perry county, Pa.; shoemaker.

Q. 2. Are you a brother of James C. Zimmerman, whose deposition
is printed on page 622 of complainants' proofs of volume I?

A. Yes, sir.

Q. 3. It appears that your brother, for a long time, lived in the same
house as his father-in-law, George W. Kissinger, at Marysville. Did
you visit him while he lived in that house?

A. Yes, sir.

Q. 4. How many times did you visit him while he lived in that
house?

A. Once.

Q. 5. When was that?

A. 1877.

Q. 6. What part of 1877?

A. In the spring.

Q. 7. Will you state some circumstances, if you can, which will en-
able you to fix that date in your mind?

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A. Well, it was the spring before I was married, and the spring I was free of my trade.

Q. 8. How old were you, the spring you were free of your trade?

A. Twenty.

Q. 9. What time that spring did you get free of your trade?

A. The first day of April.

Q. 10. Had you begun to work at your trade regularly when you went down to visit your brother, or not?

A. No, sir.

Q. 11. When were you married? If you have your marriage certificate here will you please produce it and read the date?

A. I have it here; the date is 3d day of February, 1878.

Q. 12. When was your first child born?

A. 1879.

Q. 13. Which part of the year?

A. Spring.

Q. 14. How far is it from Marysville to Elliottsburg by the highway?

A. About twenty-six miles.

Q. 15. If you don't want to go by the highway, how can you go by any regular conveyance?

A. Stage line from Landisburg to Newport. From Newport to Marysville we go by cars.

Q. 16. When you visited your brother in the spring of 1877 did you stay at the Kissinger house, and how long did you stay there?

A. I stayed at the Kissinger house two nights.

Q. 17. How did the family get the water from the spring during your visit in the spring of '77?

[This and all other questions bearing upon the time when the Kissingers put in their ram objected to as improper and incompetent evidence in rebuttal or rejoinder, the subject having been gone into at great length of testimony, including the Kissingers, J. O. Zimmerman, and others, in the testimony taken by the complainants in reply.]

A. Carried it in buckets.

Q. 18. Did you carry any in buckets yourself during that visit?

[Same objection, and also because leading.]

A. I did.

Q. 19. Did you see any of the family fetching water from the spring in buckets?

[*Same objection.*]

A. Yes, sir.

Q. 20. Was there any hydraulic ram on the place connected by pipes leading from the spring to the house, or near the house?

[*Same objection.*]

A. No, sir.

Q. 21. Did your brother James, with any of his family, ever visit you at Elliottsburg while he was living at Marysville?

[*Same objection.*]

A. Yes.

Q. 22. Which of his family were with him on that visit?

[*Same objection.*]

A. His wife and two children.

Q. 23. How many times did he visit you while he was living at Marysville?

[*Same objection.*]

A. Once.

Q. 24. What season of the year was this visit of him to you?

[*Same objection.*]

A. Fall.

Q. 25. Were you married then, or not?

[*Same objection.*]

A. Yes, sir; I was.

Q. 26. Was it before, or after your first child was born?

[*Same objection.*]

A. Before.

Q. 27. Have you ever been on the Kissinger place since that visit?

[*Same objection.*]

A. No, sir.

Cross-examined, de bene esse, by Mr. Dixon:

Cross-Q. 28. What year was it that your brother visited you, as stated by you in answer to question 23?

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A. In 1878.

Cross-Q. 29. What month?

A. That I don't know.

Cross-Q. 30. In whose house was he living at the time he paid you that visit?

A. Kissinger's.

Cross-Q. 31. Mr. Kissinger's house on the farm?

A. Yes, sir.

Cross-Q. 32. How far was this farm from the settlement of Marysville?

A. I don't know how far it might have been.

Cross-Q. 33. But weren't you at Marysville the time referred to, when you visited your brother, in your direct examination?

A. Yes, sir.

Cross-Q. 34. And yet you didn't notice things sufficiently to be able even to tell how far that farm might have been from the settlement of Marysville?

A. No, sir.

Cross-Q. 35. What month was it you visited your brother?

A. Last of April or beginning of May.

Cross-Q. 36. What was your brother doing that spring when you visited him?

A. Well, he was working about home; he had no regular job then.

Cross-Q. 37. Your brother, J. C. Zimmerman, has testified, pages 628 and 629 complainants' testimony, that in the spring of 1877 he worked for Mr. Galt, together with Jacob Weaver, Lawrence Baker, Peter Heisley, and a Mr. Metz, peeling bark for Mr. Galt, and produced an account; and "The account produced covers a page and a half, and contains a charge for each day's work as peeling bark, unloading bark, etc." The first entry is April 23, 1877; the last is June 21, 1877; is he mistaken or are you mistaken in this matter?

[*Question objected to because it does not appear that either is mistaken or that there was any discrepancy between the two statements, but the contrary.*]

A. I don't know.

Recess till 2 o'clock, P. M.

2 o'clock, P. M.

Examination resumed.

Present, same counsel as before.

Cross-Q. 38. When had you last seen your brother before the visit you paid him referred to in your direct examination?

A. I saw him the winter he moved to Marysville.

Cross-Q. 39. What year was that?

A. '75.

Cross-Q. 40. Where did he move from when he moved to Marysville in 1875?

A. He moved from Graham's Mills.

Cross-Q. 41. How far was Graham's Mills from Marysville?

A. I don't know.

Cross-Q. 42. About how far?

A. Well, I don't know—maybe twenty-five or thirty miles.

Cross-Q. 43. What season of the year did your brother move from Graham's Mills to Marysville?

A. In the fall.

Cross-Q. 44. Where did you see your brother that winter?

A. Snyder's Mill.

Cross-Q. 45. What was your occupation at that time?

A. I was learning shoemaking.

Cross-Q. 46. How long had you been working at that?

A. I don't know just about how long.

Cross-Q. 47. Well, about how long?

A. I don't know.

Cross-Q. 48. You know whether it was nearer to a year, or nearer to five years, don't you?

A. It was nearer a year than five.

Cross-Q. 49. Was it nearer two, or three years?

A. It is neither.

Cross-Q. 50. Well, about how long was it, then?

A. I don't know that.

Cross-Q. 51. You can't tell within a year or two, then?

A. Yes, sir.

Cross-Q. 52. Please to do so, then.

A. As near as I can get at it, it is eight or ten months.

Cross-Q. 53. Who were you working for at that time?

A. Samuel Spohn.

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Cross-Q. 54. At what place?

A. Greensboro'.

Cross-Q. 55. What county?

A. Perry county.

Cross-Q. 56. How far is that from Elliottsburg, where you now reside?

A. A mile and a quarter.

Cross-Q. 57. How long were you working for Mr. Samuel Spohn?

A. Two years and a half.

Cross-Q. 58. Did you ever work for anybody else, shoemaking?

A. Yes, sir.

Cross-Q. 59. Whom and when?

A. A man by the name of Mesmerman, in the fall of 1877.

Cross-Q. 60. Where did he live?

A. Blain.

Cross-Q. 61. How long did you work for him?

A. From fall till spring.

Cross-Q. 62. How far is Blain from Elliottsburg?

A. As near as I can tell, it is about eighteen miles.

Cross-Q. 63. Did you go from Mr. Samuel Spohn's directly to Mr. Mesmerman, or did you work for somebody else between?

A. Well, I hadn't been working shoemaking between, but I was working other work.

Cross-Q. 64. How long was the interval between your working for Mr. Spohn and Mr. Mesmerman, and what work did you do during that time?

A. I don't know how long it was between. I chopped wood, peeled bark, and worked on a farm.

Cross-Q. 65. Whose farm?

A. A man by the name of John Stambaugh.

Cross-Q. 66. How long did you work for John Stambaugh?

A. About five or six weeks.

Cross-Q. 67. Did you work for anybody else between the time you left Mr. Spohn's and the time you went to Mr. Mesmerman's?

A. Yes, sir.

Cross-Q. 68. Whom and when?

A. I worked for Grandfather River. He lives in Spring township, which is about eight or ten miles from Elliottsburg.

Cross-Q. 69. How long did you work for him?

A. I worked there four days.

Cross-Q. 70. Did you work for anybody else between the time you worked for Mr. Spohn and the time you worked for Mr. Mesmerman?

A. Yes, sir.

Cross-Q. 71. Whom, where, and how long?

A. I worked for a man by the name of Henry Swan, Spring township, and I don't know how long I worked for him.

Cross-Q. 72. About how long?

A. I don't know.

Cross-Q. 73. Is it because this occurred so long ago, or because your memory is poor?

A. It didn't occur so long ago; but I didn't keep no time of it. He paid me.

Cross-Q. 74. Then, as it only occurred six or eight years ago, why are you unable to remember anything about how long you worked for Mr. Swan?

A. Well, I didn't keep no account of it.

Cross-Q. 75. You don't remember, then, always, little details that occurred six or eight years ago unless you have an account or memorandum of them?

A. Not always.

Cross-Q. 76. Do you remember what month it was you worked for Mr. Swan?

A. No, sir.

Cross-Q. 77. You say you don't know how long it was between the time you worked for Mr. Spohn and the time you worked for Mesmerman; can you tell us about how long it was?

A. No, sir.

Cross-Q. 78. Did you ever see a hydraulic ram in operation?

A. No, sir.

Cross-Q. 79. Did you ever see a hydraulic ram?

A. I seen a ram. I don't know whether it was a hydraulic or not.

Cross-Q. 80. When and where?

A. I couldn't tell you now whether it was in 1881 or 1882; at Widow Kistler's; she lives about a mile from Elliottsburg.

Cross-Q. 81. What is the reason you can't tell whether it was a hydraulic ram or not?

A. Well, I seen it standing there, and they said it was a ram, and that was about all that was said about it.

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Cross Q. 82. Had you ever seen a hydraulic ram, or anything said to be a ram, when you made that visit to your brother?

A. No, sir.

Cross-Q. 83. State whether or not there was a bake-oven out of doors at Mr. Kissinger's when you visited there.

A. I couldn't say positive; there was a wood-shed there.

Cross-Q. 84. I asked about the bake-oven; have you any recollection whether there was a bake-oven there?

A. No, sir.

Cross-Q. 85. Then you don't remember that there was any there?

A. No, sir.

Cross-Q. 86. Was there or was there not a dry-house for drying peaches there?

A. I don't know.

Cross-Q. 87. Have you any recollection of one being there?

A. No, sir.

Cross-Q. 88. Your brother, J. C. Zimmerman, had testified, pages 659 and 660 complainants' record, that after the hydraulic ram was put in Kissinger's place that at times it didn't work very well, and sometimes wouldn't force the water up. The house was a good deal higher than the spring, and after the ram was put in, when it didn't work, the water for family use would have to be carried from the spring in buckets, would it not?

A. Yes, sir.

Re-direct examination by Mr. Storrow:

Q.Q. 89. Whom did you learn your trade with?

A. Samuel Spohn.

Q.Q. 90. You have testified that you quit learning your trade about the first of April and that you afterwards worked for Mr. Mesmerman; did you work for Mr. Mesmerman the same year you quit your trade, or did you commence with him a subsequent year?

A. Same year.

Q.Q. 91. In what year was it you quit learning your trade?

A. The spring of '77.

Q.Q. 92. When you were on a visit to your brother's, which you have testified about, did he make mention of any kind of a job he was expecting, and if so what kind?

[*Objected to as incompetent on re-direct examination, and also because calling for hearsay statements of another of complainants' witnesses.*]

A. Yes, sir; he talked about a job; he talked about peeling bark.

Q. Q. 93. Do you remember whether the Kissinger house, where your brother lived when you visited him, was a short walk, or a long walk from Marysville?

A. Short walk.

Q. Q. 94. During the recess we had this noon, did you first mention to me about the job of peeling bark, or did I first speak to you about that?

A. I mentioned it.

Examination taken, reduced to writing, and by the witness affirmed to and subscribed before me, this 9th day of May, A. D. 1884.

BENJ. FRANKLIN ZIMMERMAN.

JOSHUA R. MORGAN,
Notary Public, Special Examiner.

JOHN M. FISHER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Storrow:

Q. 1. State your name, age, residence, and occupation.

A. John M. Fisher; I am about fifty years old; am a farmer; Fairview township, York county.

Q. 2. Do you know Jacob Evans, of Eichinger's Mill, who testified at Philadelphia a year ago last January for complainants, (see complainants' proof, 974,) and testified in October last at Harrisburg for defendants? (Defendants' sur-rebuttal, page 88.)

A. Yes, sir.

Q. 3. How near his mill is your place?

A. Well, it is in sight; it may be an eighth of a mile.

Q. 4. How long have you lived at that place?

A. Five years this spring.

Q. 5. Did you hear any conversation last summer between Jacob Evans and John C. Comfort? and if so, state where it was, and the circumstances, and what each of them said.

[*Objected to because calling solely for hearsay statements, and also because no foundation has been laid for the question by any questions to Mr. Evans when he was upon the stand, relating to the subject; and also because immaterial, irrelevant, and remote.*]

A. Last summer about haymaking, when I commenced making hay, Jacob Evans, George Ditlow, Elias Garman, and myself—well, Mrs.

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Evans was there, too, in front of my house at the road—John C. Comfort came along in a buggy, a lady with him, and he said to Mr. Evans: "Well, Jake, what is your opinion on the talking-machine to-day?" "About the same," said he. "I never saw it, and don't believe there was one." That is just the way he spoke, and so that is all I paid any attention to.

Q. 6. Did Mr. Comfort get out of the buggy, or did he drive on?

A. Drove on.

[*Deposition objected to for the reasons above given.*]

Cross-examination, de bene esse, by Mr. Jacobs:

Cross-Q. 7. Who was the lady in the buggy with Mr. Comfort?

A. I cannot tell you.

Cross-Q. 8. Have you repeated the whole of the conversation that took place between Mr. Comfort and Mr. Evans?

A. Yes, sir.

Cross-Q. 9. You are certain that you have given the exact words, are you?

A. Yes, sir.

Cross-Q. 10. The conversation, I suppose, did not occupy more than a minute or so, did it?

A. A very short time.

Cross-Q. 11. And not a word was uttered, either by Mr. Evans or by Mr. Comfort, except those which you have given; is that correct?

A. Not to my recollection.

Cross-Q. 12. How did Mr. Evans come to be in front of your house at the time of which you speak?

A. He came up there on a Sunday to pay me a little visit.

Cross-Q. 13. Did he have any business with you?

A. No, sir; nothing more than he came up to talk; we just met there as we often do as neighbors.

Cross-Q. 14. What time of day was it that this conversation between Mr. Comfort and Mr. Evans took place?

A. Oh, I can hardly tell you; after dinner some time—one or two o'clock.

Cross-Q. 15. How long was Mr. Evans at your house that day?

A. I can't tell you that; not very long.

Cross-Q. 16. How did George Ditlow come to be there?

A. He came there on a Sunday to visit me.

Cross-Q. 17. Where was he living at that time?

A. Where he is living to-day—on Mr. Ross' farm.

Cross-Q. 18. Where is that?

A. Near New Cumberland, at the junction of the Yellowbreeches creek and the Susquehanna river.

Cross-Q. 19. How far did he live from your house?

A. About three miles.

Cross-Q. 20. Had he any business with you that day?

A. No, sir; no more than to pay me a visit.

Cross-Q. 21. How did Mr. Elias Garman come to be at your house on that occasion?

A. Why not take them two men together? He came there with Ditlow—both together.

Cross-Q. 22. Where did he live at that time?

A. In the tenant-house with Ditlow.

Cross-Q. 23. Did he have any business with you on that occasion?

A. No, sir.

Cross-Q. 24. How long were he and Mr. Ditlow at your house on that day?

A. About four or five hours, I suppose.

Cross-Q. 25. When did they come to your house?

A. Well, they came in the forenoon some time and went away before evening; I don't know just what time; I didn't look.

Cross-Q. 26. Did they go away before, or after Jacob Evans?

A. After.

Cross-Q. 27. Was Mr. Evans at your house as much as an hour or two that afternoon?

A. No, sir; I don't think he was; I can't just recollect; it wasn't very long.

Cross-Q. 28. Give us your best recollection as to the length of the time he was there.

A. Oh, well, there is just this in it—it was there at the road; it was not very long.

Cross-Q. 29. Was it as much as a half hour?

A. Well, make it a half hour; I was just talking there—when I sit down to talk with a man time slips along pretty fast.

Cross-Q. 30. How far from your house did this conversation between Comfort and Evans take place?

A. About fifty yards.

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Cross-Q. 31. Does your house stand back from the road that distance?

A. Yes, sir.

Cross-Q. 32. The conversation took place immediately in front of the house, did it?

A. Well, what do you call in front of the house? It was right across—well, I will just tell you as I said before, in front of the house at the road there. That is what I mean.

Cross-Q. 33. In your 29th answer you say, "When I sit down to talk with a man time slips along pretty fast." Were you sitting down talking to Mr. Evans whilst he was there at your house, or in front of it?

A. Yes, sir; sitting on the fence.

Cross-Q. 34. Was he in the house at all during that visit?

A. No, sir.

Cross-Q. 35. Were Ditlow and Garman present with you and Jacob Evans all the time he was there?

A. Yes, sir.

Cross-Q. 36. And where was Mrs. Evans? Was she out in the road with you and the rest you have named the whole time, or did she go into the house?

A. No, sir; she was there, and they both went home.

Cross-Q. 37. Did they walk to your house on that occasion, or did they come with a team?

A. No, sir; they just walked along the road, and just met there at the gate.

Cross-Q. 38. Did Ditlow and Garman come to your place on foot, or with a team?

A. With a team.

Cross-Q. 39. Were any of the members of your family present when Mrs. Evans was there?

A. No, sir.

Cross-Q. 40. Were Mrs. and Mr. Evans accustomed to come to your house frequently?

A. Yes, sir.

Cross-Q. 41. Then I suppose they have been there at different times every year since they have lived at Eichinger's Mill, have they not?

A. Yes, sir.

Cross-Q. 42. When did they move to Eichinger's Mill?

A. Three years this spring—or is it four?—three years.

Cross-Q. 43. Which direction from Eichinger's Mill do you live?

A. West.

Cross-Q. 44. When John C. Comfort drove up to where you and Mr. Evans were, were the parties whom you have named all near together and taking part in conversation or not?

A. They were all sitting there just as I was.

Cross-Q. 45. All sitting on the fence?

A. Mrs. Evans was standing in the road.

Cross-Q. 46. And the rest were all sitting on the fence?

A. Yes, sir.

Cross-Q. 47. Were they all taking part in the conversation just before John Comfort drove up?

A. Yes, sir.

Cross-Q. 48. Were they all taking part in conversation after Comfort drove on?

A. Yes, sir.

Cross-Q. 49. How long had Jacob Evans been there before Comfort came?

A. Fifteen or twenty minutes.

Cross-Q. 50. How long did he remain after Comfort left?

A. Well, I haven't charged my memory with that.

Cross-Q. 51. Give me your best recollection on the subject.

A. Ten or fifteen minutes.

Cross-Q. 52. How long after Jacob Evans left did Ditlow and Garman remain with you?

A. Couple of hours.

Cross-Q. 53. From what direction did John C. Comfort come when he stopped, as you say, in front of your house and talked with Jacob Evans?

A. From the direction of Eichinger's mill. He came up the road.

Cross-Q. 54. And when he left, in what direction did he go?

A. Towards New Cumberland.

Cross-Q. 55. Mrs. Evans was acquainted with the members of your family, was she not?

A. Yes, sir.

Cross-Q. 56. If she was in front of your house for about half an hour, how does it come that she didn't go into your house to see your family?

A. Well, she said she wanted to go home. I asked her in, but she said she wanted to go home.

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Cross-Q. 57. Did you ask her in immediately after she came ?

A. Don't mind.

Cross-Q. 58. Did you ask her in before the arrival of John Comfort, or after he had gone, or while he was there ?

A. Don't recollect.

Adjourned until May 10, 1884, at 10 o'clock.

MAY 10, 1884, 10 o'clock, A. M.

Examination resumed, pursuant to adjournment.

Present, same counsel as before, and Mr. Smith.

Cross-examination of John M. Fisher, de bene esse, by Mr. Jacobs continued :

Cross-Q. 59. What was the subject of the conversation that was going on at the time John Comfort drove up ?

A. Mrs. and Mr. Evans' little boy had walked up the road there towards the mill-dam, and they thought probably he might have fell in, and they went on the hunt of him ; but they had found him ; that is the way they came together.

Cross-Q. 60. They had the little boy along with them at your place, had they ?

A. Yes, sir ; he was there.

Cross-Q. 61. How old a boy was he ?

A. About four years old, I suppose.

Cross-Q. 62. My 59th question has not been distinctly answered yet, and I will ask the Examiner to put it to you again.

[*Question repeated.*]

A. We had been talking about that boy I have just said that went away.

Cross-Q. 63. Do you mean that at the time Comfort drove up you were there and talking about "that boy that went away ?"

A. Best of my recollection.

Cross-Q. 64. What was the first subject talked about when Mr. and Mrs. Evans came to your place ?

A. About that boy going away.

Cross-Q. 65. And the conversation on that subject was kept up until Mr. Comfort arrived, was it ?

A. Best of my recollection—we were not there long until he came.

Cross-Q. 66. Mrs. Evans came there with Mr. Evans, did she?

A. Yes, sir.

Cross-Q. 67. Tell us, if you please, all that was said about the boy going away from the time Mr. and Mrs. Evans came up to the time John Comfort came?

A. I think I am trying to tell you.

Cross-Q. 68. You have as yet told us nothing on the subject except that you had been talking about it. What I want to know is what was said, and who said it.

A. There is just this in it: I can't come down here and interpret every word. I can't just mind every word for word, is what I mean by it.

Cross-Q. 69. Well, then, if you can't just mind every word, tell us all the words that you can mind of the conversation with regard to the boy that went away.

A. They said the boy went away, and feared he had fell in the dam, as I said before, and they had went up to hunt him, and found him. Then we were talking there—he might have been drowned, and so on. That is about all I can remember.

Cross-Q. 70. Have you undertaken to give the precise words that were said, or only your recollection of the substance of the conversation as you understood it?

A. As near as I can tell.

[*Question repeated.*]

A. If I understand you right, I answered to the best of my recollection.

Cross-Q. 71. You have given us what you can recollect of the conversation with regard to the boy that went away, this: "They said the boy went away, and feared he had fell in the dam, as I said before, and they had went up to hunt him, and had found him." Now, what I want to know is whether the words you have given are the precise words used by any of the persons whom you have named, or whether you have merely undertaken to give what you recollect of the substance of the conversation on that subject.

A. What I recollect was spoke there on their return—when they returned and we were talking there.

Cross-Q. 72. Do you mean that you have given the precise words that were spoken, or only the substance of what was said?

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A. Well, now, I will have to ask you for an explanation of what "the substance" means. I am not a very good scholar.

Cross-Q. 73. I mean have you given the exact words that were used, or are you only prepared to say that words were used which conveyed to you the same meaning as those which you have given ?

A. If I understand it right, I am.

Cross-Q. 74. But I want to know which of the two you are undertaking to give—the exact words that were used in that conversation, or only what you understood from the conversation ?

A. That I understood.

Cross-Q. 75. Then no one in the conversation used the precise words which you have given ; is that correct ?

[*Objected to as a perversion of the witness' testimony, and a mere waste of time.*]

A. That there that you read last is what they said ; that is precise. [The examiner had first read to the witness the answer to cross-question 69.]

Cross-Q. 76. Who said what was just read to you ?

A. Mr. Evans, the father of the boy.

Cross-Q. 77. Will you now give me again the exact words that Mr. Evans spoke upon the subject ?

A. Ain't it on the paper there ?

Cross-Q. 78. But I want you to repeat to the Examiner the exact words he spoke.

A. I must repeat that, must I ? Well, they went up ; the boy went away first, and they were on the hunt of him. They feared he had fell in the dam and had drowned, but found him and was on their return.

Cross-Q. 79. Is that all that you can remember that Mr. Evans said in that conversation upon that subject ?

A. Yes, sir ; at this time.

Cross-Q. 80. And you mean to say that Mr. Evans used the very words that you have given in your 78th answer ?

A. Yes, sir ; to my recollection.

Cross-Q. 81. What, if anything, did Mrs. Evans say upon the subject ?

A. About the same that was spoke, you know—about the boy going away.

Cross-Q. 82. Please give me, if you can, the precise words she spoke on the subject.

A. She said if the little fellow, little boy rather—put it that way—had been to Mr. Conley's, a neighbor, when they found him.

Cross-Q. 83. Might she not have used other words than those you have just given, conveying to your mind the same meaning?

A. Yes, sir.

Cross-Q. 84. Then you do not remember her precise words, do you?

A. No, sir.

Cross-Q. 85. Is what you have given all she said upon the subject?

A. To the best of my recollection.

Cross-Q. 86. Then she might have said more which you do not recollect; is that correct?

A. Yes, sir.

Cross-Q. 87. Were these remarks of Mr. and Mrs. Evans addressed to you particularly, or to all the persons there present?

A. To all.

Cross-Q. 88. Was anything said by any of you in reply to the remarks of Mr. and Mrs. Evans?

A. Yes; they said that he shouldn't went away; that if he was not careful he might fall in and drown, or something to that amount.

Cross-Q. 89. Who said this?

A. I for one; don't know whether the rest did or not?

Cross-Q. 90. What else was talked about whilst Mr. and Mrs. Evans were there, and before John Comfort arrived?

A. Can't recollect.

Cross-Q. 91. Is it your recollection or not that this matter of the boy going away was the only subject talked about prior to the arrival of John Comfort?

A. At this time.

Cross-Q. 92. Then there might have been other subjects talked about that you don't remember; is that correct?

A. Yes, sir.

Cross-Q. 93. Were Ditlow and Garman present and within hearing during all the time—from the time Mr. and Mrs. Evans came up to the time when John Comfort came?

A. Yes, sir.

Cross-Q. 94. You and Ditlow and Garman, as I understand, were sit-

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ting on the fence talking, when Mr. and Mrs. Evans came up; is that correct?

A. Yes, sir.

Cross-Q. 95. Then Jacob Evans sat on the fence with you, and remained there until Comfort came up; is that correct?

A. Yes, sir.

Cross-Q. 96. What were you and Garman and Ditlow talking about when Mr. and Mrs. Evans came up?

A. Don't recollect.

Cross-Q. 97. Tell me all that you can recollect that was talked about between you and Ditlow and Garman from the time they arrived at your place up to the time when Mr. and Mrs. Evans came.

A. That I can't do.

Cross-Q. 98. Can't you tell anything that was talked about?

A. No, sir.

Cross-Q. 99. Can you tell how early in the forenoon they came to your house?

A. No, sir—before dinner, and they left in the afternoon some time.

Cross-Q. 100. What time do you mean by "before dinner?"

A. Before twelve o'clock.

Cross-Q. 101. Was it shortly before dinner, or an hour or two before they came?

A. An hour, I suppose.

Cross-Q. 102. You and they were together all the time that they were on your place that day, were you not?

A. Yes, sir, as near as I can tell.

Cross-Q. 103. What was the first thing spoken of when Comfort drove away?

A. Can't tell you.

Cross-Q. 104. Can you tell me anything that was talked about after Comfort left, and whilst Mr. and Mrs. Evans were still there?

A. No, sir.

Cross-Q. 105. How long did Ditlow and Garman stay after Mr. and Mrs. Evans left?

A. Can't tell you.

Cross-Q. 106. Was it an hour or more, or only a few minutes? Give me your best recollection.

A. Can't tell you for I didn't look what time they left.

Cross-Q. 107. Did they stay to supper with you?

A. No, sir.

Cross-Q. 108. Did they leave before, or after the middle of the afternoon?

A. What do you call the middle of the afternoon?

Cross-Q. 109. Well, three or four o'clock.

A. Some time about that time I suppose they left.

Cross-Q. 110. Do you remember of anything that was talked about between you and Garman and Ditlow after Mr. and Mrs. Evans left?

A. No, sir.

Cross-Q. 111. Who first came to see you with regard to your giving your testimony here?

A. Mr. Comfort.

Cross-Q. 112. When did he first come to see you about it?

A. About three weeks ago, as near as I can get at it.

Cross-Q. 113. What did he say to you?

A. He asked me whether I minded of him coming along the road last summer, when we were sitting there on the fence. I told him I did.

Cross-Q. 114. Well, what else took place between you and Mr. Comfort at that time?

A. He asked me whether I minded the conversation or what was said there. I told him I did. I said, "Comfort, don't take me to Philadelphia." I tell you as near as—what was spoke there. Then he said he would. I spoke then—said I don't want to go down there.

Cross-Q. 115. Is that all?

A. Then he said I should go to see Garman and Ditlow—which I didn't. Then I said—just this way I spoke, "They have been talking about this talking-machine up here at Milltown, but I never got there to see it."

Cross-Q. 116. Is that all you can remember of your conversation?

A. Well, he drove on then at that time.

Cross-Q. 117. What did he want you to go to see Garman and Ditlow for?

A. If they minded what was said there when he drove up—that is, in the summer when he drove up.

Cross-Q. 118. He wanted you to talk the matter over with them, did he?

A. No, sir; he just said I should go to see them.

Cross-Q. 119. And see whether they remembered the conversation between him and Evans which you have testified to; is that it?

A. Yes, sir.

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Cross-Q. 120. Did he say whether or not he himself had been to see them?

A. No, sir.

Cross-Q. 121. Did he give any particular reason for wanting you to go to see them?

A. No, sir.

Cross-Q. 122. I suppose he offered to compensate you for going to see them, did he not?

A. Yes, sir.

Cross-Q. 123. How much did he offer to give you for going to see them?

A. Ten dollars.

Cross-Q. 124. They live about three miles from you, do they not?

A. Near as I can tell.

Cross-Q. 125. It wouldn't have taken above a half a day, I suppose, for you to go to see them, would it?

A. No, sir.

Cross-Q. 126. Ten dollars would have been pretty big pay for you for that time, would it not?

A. I count I am losing more than ten dollars to-day by not being home. My time is worth money to me now.

Cross-Q. 127. But I suppose you could have spared a single half day to drive away from home, or an evening, three weeks ago, for less than ten dollars, could you not?

A. If it would stop at that I could, but it won't stop at that.

Cross-Q. 128. Did Garman or Ditlow ever come to see you about this matter?

A. Ditlow was there for seed-corn, and he says, "They may take us to Philadelphia." "I don't want them to," says I, just that way. That is about all that was spoke about that.

Cross-Q. 129. When was he to see you?

A. Last Sunday; he wanted seed corn.

Recess until 2, P. M.

2 o'clock, P. M.

Examination resumed.

Present, same counsel as before.

Cross-Q. 130. I request the Examiner to read to you your 113th, 114th, 115th, 122d, and 123d answers, and I ask you whether what you have stated in them is all that you can remember of the conversation

that took place between you and John C. Comfort at the time he came to see you about three weeks ago.

A. All that I can remember at this time.

Cross-Q. 131. Where did this conversation take place?

A. Right at the mill; down where I was making a little stretch of fence.

Cross-Q. 131. How long were you and Comfort talking together on that occasion?

A. Not very long.

Cross-Q. 132. Five or ten minutes, or more?

A. Might have been talking fifteen.

Cross-Q. 133. Anybody else present?

A. My hired man was there.

Cross-Q. 134. What is his name?

A. Rudy; but I don't think he paid any attention to what was said.

Cross-Q. 135. What is his first name?

A. John.

Cross-Q. 136. How far away from you and Comfort was he when the conversation occurred?

A. Well, I can hardly tell you; it was right along the road, and he was making fence along the road.

Cross-Q. 137. He was within hearing distance, was he?

A. Yes, sir.

Cross-Q. 138. In that conversation did you tell John Comfort when "they had been talking about this talking-machine up at Milltown?"

A. Yes, sir; now let me state a little. He passed by me twice that day; he went down and back; but when he went back, to the best of my recollection, very little was said about that subject; he merely mentioned it, but it didn't amount to anything.

Cross-Q. 139. The conversation which you have given took place when he went down, did it?

A. Yes, sir; to the best of my recollection.

Cross-Q. 140. Will you now tell me just what was said in that conversation upon the subject of the talking-machine?

A. I have told it before as near as I can; that I had heard about that talking-machine, but I never seen it, I said.

Cross-Q. 141. And you told him when you had heard about it, did you?

A. Well, I made no exact time—since the time this thing has been

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going on is what I meant when I spoke to him about the talking-machine.

Cross-Q. 142. Didn't you tell him you had heard about it a long time ago?

[Objected to, as the witness has already stated that he did not name any time, and has already stated what he did mean, when he spoke to Mr. Comfort on the matter, and further objected to as vague and indefinite.]

A. Not a long time ago.

Cross-Q. 143. Did he ask you about anything else besides the conversation between himself and Jacob Evans?

A. Not to my recollection.

Cross-Q. 144. Didn't he ask you anything about the floods along the Yellowbreeches creek and the damage done by them to the foot-bridges?

[Objected to as not proper cross-examination and merely a waste of time.]

A. I think he did, but I told him I knew nothing about it.

Cross-Q. 145. Tell us all that was said in that conversation upon that subject.

[Same objections.]

A. I have, as near as I recollect it.

Cross-Q. 146. Can't you tell us just what he said upon that subject, and what you replied?

[Same objections.]

A. Well, he asked me if I minded anything of the foot-bridge going away?—I thought I had stated that before—I told him I could not.

Cross-Q. 147. What foot-bridge?

A. He didn't say; he just said the foot-bridge, to the best of my recollection.

Cross-Q. 148. Did he say the foot-bridge along any particular creek?

A. Yellowbreeches, I suppose he meant.

Cross-Q. 149. As only about three weeks have elapsed since that conversation, I suppose you will be able to give me the precise words that he spoke and you replied on that subject, will you please do so?

A. That is just what I am trying to do—the best—can't do more.

[Question repeated.]

A. I don't know; there is just this in it: I will have to go over some of the first, there, that we have been over. He asked me if I

mind of the flood? I told him I did, but could not tell him when—what year it was.

Cross-Q. 150. And that was all that was said between you on the subject of floods and bridges, was it?

[Objected to, as the witness has already stated what was said on the subject of the bridge, and this question is simply an attempt to badger and mislead.]

Counsel for defendants protests against this improper interference with the cross-examination of the witness, and against the evident attempt on the part of complainants' counsel to direct the witness.]

A. To the best of my recollection.

Cross-Q. 151. The whole conversation upon the subject between you and Mr. Comfort did not amount to more than a sentence or two on each side, did it?

A. No, sir.

Cross-Q. 152. How long after he left you and went down the road did he return?

A. Probably a couple of hours.

Cross-Q. 153. And how long did he remain with you the second time he was there?

A. He might have been there an hour and a half or two hours sitting in his buggy in the road. Then the subject was farming, making fence, and so forth—a little of everything.

Cross-Q. 154. Were you talking with him all the time?

A. I was making fence there—talking back and forth, as men do when they go by.

Cross-Q. 155. Was he talking to any one else there besides you?

A. No, sir.

Cross-Q. 156. Was either the conversation between him and Evans, or the subject of the floods and foot-bridges, or the talking-machine, spoken of in that second conversation which you had with Comfort that day?

A. No, sir; not to my recollection.

Cross-Q. 157. What kept him there so long?

A. I guess that was his business, not ours; I didn't ask him.

Cross-Q. 158. Do you mean us to understand that he sat there in his buggy an hour and a half or two hours talking with you on the sub-

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ject of farming, making fence, and so forth, without alluding to any of the subjects mentioned in my 156th question?

A. Well, he done the talking about the talking-machine going down. Read that over again. There are two raised up there, arn't there?

[*The question being re-read to the witness he answers,*]

Yes, sir.

Cross Q. 159. Wasn't this, in substance, what you said to Comfort when he stopped at your place going down: "You needn't take me down to Philadelphia, for I couldn't do any good for your side. What I would have to say would be more in Drawbaugh's favor than in yours, because I heard of his talking-machine a long time, or a good while ago?"

A. Well, now there is just this in that: I don't know as I said that I could do more on Drawbaugh's side. I might have said my good would be as much on one side as the other, for I knowed nothing to benefit either side.

Cross-Q. 160. I did not ask you what you might have said, but whether or not you did say what is stated in my last question. Will you please tell me that?

A. No; I said as much on one side as the other; that is the way I spoke to Comfort; that is the way I spoke and meant.

Cross-Q. 161. Did you not tell Mr. Drawbaugh, in the presence of Mr. C. S. Clendennin, about two weeks ago, that you had told Comfort substantially what I have stated in my 159th question?

[*Complainants enter an objection to the line of examination as not cross-examination, but a colorable attempt to introduce hearsay, by leading questions, for the benefit of the defence.*]

A. Well, Mr. Drawbaugh, he came there and asked me whether there was a man there to see me, and I told him not. He said he understood that a man was paid pretty well to come and to see you on that subject that Comfort and me was talking about. That is as near as I can come to it. I want to do the fair thing, if I can. Then I told Mr. Drawbaugh about what you had said to me there, and he said they will not take you down—you need not be afraid. I told him then that I had heard about his talking-machine, and then he left.

Cross-Q. 162. What do you mean by this part of your answer: "Then I told Mr Drawbaugh about what you had said to me there"?

A. Well, you asked me if Drawbaugh didn't tell me; that is what I meant, that there article which you read to me.

Cross-Q. 163. You mean what the Examiner read to you from my 159th question?

A. That is not what I mean. It is another one, later than that.

Cross-Q. 164. Was it anything that the Examiner read to you from the record?

A. Yes, sir.

Cross-Q. 165. I will now ask the Examiner to read the record to you, from the 159th question down to this point, and ask you to indicate to him what it is to which you refer.

[*Question objected to because it is not an attempt to obtain the knowledge or recollection of the witness, but simply an attempt to confuse and mislead him.*

Counsel for defendants replies that he is simply endeavoring to get him to explain what is obscure in his 161st and 162d answers, and to that end requests the examiner to read the record from the 159th answer, in order that the witness may indicate what "article," which has been read to him, he refers to.]

A. I said that I couldn't do any more for one side than the other; those are the words I spoke to Comfort.

[*When the Examiner was reading answer to 159th question the witness said "stop there, that is."*]

Cross-Q. 166. What I am trying to get at is this, did you or did you not tell Mr. Drawbaugh, in the presence of Mr. Clendennin, about two weeks ago that when John Comfort came to see you, you told him, substantially this: "You needn't take me down to Philadelphia, for I couldn't do any good for your side. What I would have to say would be more in Drawbaugh's favor than in yours, because I heard of his talking-machine a long time, or a good while ago?"

A. That is the article that I was going to get at, that I stopped you at. I was a little confused and got wrong. That was, I was going to get at the conversation that took place between Clendennin, Mr. Drawbaugh, and me. I didn't say I could do more for Drawbaugh's side than the other side. I said I would be as much benefit to one side as the other. That is what I said when Drawbaugh was there, if my memory serves me right.

Cross-Q. 167. When did you meet Mr. Comfort again after the day he stopped twice along the road to speak with you?

A. He met me at Ross's farm at New Cumberland, took me in a

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buggy and brought me right down here—that is, took me to Harrisburg.

Cross-Q. 168. When was that?

A. Thursday dinner—Thursday afternoon. Mr. Baker came into the field and fetched me over to Ross' farm. Ditlow got in with him, and I got in with Comfort.

Cross-Q. 169. Ross farm is where George Ditlow and Elias Garman live, is it?

A. Yes, sir.

Cross-Q. 170. Ditlow came down to Philadelphia with you Thursday afternoon, did he?

A. Yes, sir.

Cross-Q. 171. Did Garman come, too?

A. No, sir.

Re direct examination by Mr Storrow :

Q. Q. 172. When Drawbaugh and Clendennin came to see you, did they ask you what you had heard Jacob Evans say to Mr. Comfort last summer?

A. No, sir.

Q. Q. 173. Was that subject spoken of at all between you and Drawbaugh and Clendennin?

A. No, sir.

Q. Q. 174. Then all that Drawbaugh and Clendennin talked about to you, so far as the substance of this case is concerned, is whether you knew anything about Drawbaugh's telephone; is that the fact?

[*Objected to as leading and suggestive, and as a palpable perversion of the witness' testimony.*]

A. Drawbaugh asked me—Clendennin's still—whether there was a man to see me on the telephone subject, or something to that amount. I told him, "No, sir;" but he said there is a man paid pretty well to come to see you; that was about what was spoke when he was there.

Q. Q. 175. Were you willing to come down to Philadelphia to testify, or quite unwilling?

[*Objected to as leading.*]

A. Well, I would rather not come, for it didn't suit me very well.

Q. Q. 176. Has Garman lost a child from scarlet fever within a few days?

[*Objected to as immaterial and not proper re-direct examination.*]

A. Yes, sir; about a week or so ago; I can't tell just when.

Q. Q. 177. Do you own the farm on which you live or not?

[*Same objection.*]

A. If I get it paid for once I guess I will own it.

[*The whole of the above deposition objected to, in addition to the reasons heretofore given, because it is an attempt by complainants to contradict the testimony of their own witness, Jacob Evans, given when called by complainants in rebuttal.*]

Examination taken, reduced to
writing, and by the witness sub-
scribed and affirmed to before me,
this 10th day of May, 1884.

JOSHUA R. MORGAN,
Notary Public, Special Examiner.

JOHN M. FISHER.

[Notary seal.]

[*Complainants state that they have desired to have S. G. Geib, railroad agent at Marysville, produce two of the railroad books kept by him; that they had him duly summoned for that purpose, but that the present superintendent of the railroad refused to allow the books to be brought to Philadelphia, and as they cannot be produced here without a good deal of trouble and delay, the complainants produce the affidavit of Mr. Geib, and are content that the Examiner shall verify the same by examining the books if the defendants desire. The affidavit is as follows:*

• "CIRCUIT COURT OF THE UNITED STATES,
Southern District of New York.

American Bell Telephone Company *et al.*

vs.

People's Telephone Company *et al.*

I, Samuel G. Geib, agent Pennsylvania railroad, at Marysville, Pa., depose and say as follows:

I have already given two depositions in this cause. In a deposition given for the complainants at Baltimore in August, 1882, I produced the books of said R. R., and certain entries about pipe consigned to Daniel Drawbaugh were copied therefrom. I am informed that there is an error in the printed book of testimony, and therefore certify that the date of the order signed by Daniel Drawbaugh is the sixth of September, and not the twenty-sixth.

I have to-day examined the book.

I further certify that the freight for said pipe was paid September 10, 1878, and is entered on the cash-book at that date. The entry is in

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my handwriting, and was made at the time in the usual course of business.

Affirmed and subscribed to before
me this 7th day of May, 1884.
FRED. M. OTT,
Notary Public.

SAMUEL G. GEIB, Agent.

[Notarial Seal.]

[The foregoing affidavit objected to as incompetent and not evidence.]

Complainants' counsel calls attention to the fact that in the deposition of George W. Kissinger, complainants' proofs, page 554, the statement of what is put in evidence states that the order is dated September 6th, 1878, and that part of the record is believed to be in the handwriting of the Examiner; that the copy of the order at the top of page 555 has the date September 26th, which is believed to be the error of the copyist; that the question 7 to Mr. Geib, page 580, states that "the order from Mr. Drawbaugh was a little more than two months after" July 2, 1878. He requests the Examiner, who has not yet returned the record into Court, to satisfy himself whether the clerical work is correct; and if not, to correct it. And he regrets that the defendants have felt called upon to make an objection which may require the parties to go to Marysville to look at a couple of entries in the railroad books.

The complainants' counsel states that in that part of the objections made by him after McAllister's 140th answer, (p. 2093,) he finds that he made a mistake in stating that the defendants' counsel did not ask if new stretchers were procured, etc., owing to the fact that the complainants' counsel who made the objection was not present during the whole of Umberger's cross-examination; he now refers to Umberger's deposition, pages 1980 and 1981, cross-questions and answers 83-4-5-6.]

Adjourned till May 12, 1884, at 10 o'clock.

MONDAY, May 12, 1884, 10, A. M.

Examination resumed.

Present, Mr. Storrow for complainants and Mr. Dixon for respondents.

GEORGE DITLOW, being produced, affirmed, and examined, saith:

Examined by Mr. Storrow:

My age is thirty; I reside close to New Market, York county; I am farming Andrew Ross' farm there; I have my own stock and everything, and am farming on the shares.

Q. 1. Do you know Jacob Evans, the miller ?

A. Yes, sir.

Q. 2. Is Mrs. Evans a relative to you ; and if so, what relation ?

A. Yes, sir ; she is my first cousin.

Q. 3. It has appeared that there were two families of Ditlows—the Abraham Ditlow family and the David Ditlow family—who lived for many years about a quarter of a mile below Eberly's Mills, and near Etter & Shanklin's mill ; did you belong to one of those Ditlow families ; and if so, which one ?

A. Yes, sir ; I belong to the David Ditlow family.

Q. 4. It has appeared that your step-father, Mr. David Ditlow, about the first of April, 1875, moved to Camp Hill ; did you live with him up to that time ?

A. Up to 1875 ? Yes, sir.

Q. 5. About how long had you lived there at your father's place before that ?

A. I lived there nineteen years.

Q. 6. When your father moved to Camp Hill, did he have a sale of his farming stock, etc. ?

A. Yes, sir.

Q. 7. While you lived with your father up to the time he moved away, in April, 1875, were you ever in Daniel Drawbaugh's shop, in the old clover-mill down where Cedar run empties into the Yellow-breeches ?

A. Yes, sir.

Q. 8. I suppose you knew Daniel Drawbaugh for a good many years before you moved away ?

A. Yes, sir.

Q. 9. While you lived with your father, before 1875, were you in the habit of going to the village of Milltown or not ?

[*Objected to as leading.*]

A. Yes, sir.

Q. 10. Did you go there frequently, or seldom ?

[*Same objections.*]

A. I went there frequently.

Q. 11. At what post-office did your family get their mail ?

A. At Milltown.

Q. 12. Did you ever go to the store at Milltown in the evenings ?

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A. Yes, sir.

Q. 13. Seldom or often?

A. I got up pretty often, still.

Q. 14. Did you know pretty near all the people at Milltown, or not?

A. I knowed the most of them.

Q. 15. Did you ever, while you lived with your father, hear from anybody that Daniel Drawbaugh had a talking-machine?

[*This and all other questions inquiring as to the telephones or talking-machines of Mr. Drawbaugh objected to as improper and incompetent in rejoinder.*

Complainants' counsel objects to the assumption that Drawbaugh had any telephones or talking-machines during the time inquired of, and further states that defendants' so-called sur-rebuttal contains a large amount of depositions purely cumulative in their character, and that this testimony from this witness is moreover directed to specific assertions in the so-called rebuttal and refers, among other passages, to Hosler's answer 25, p. 370.]

A. No, sir.

Q. 16. When your father broke up on his farm, in April, 1875, did you go to live with him at Camp Hill, or where did you go to?

A. I didn't go to live with him; I lived at Mart. Kauffman's, about a mile from New Cumberland, in York county.

Q. 17. One of the witnesses for the defence (see sur-rebuttal, p. 441) said that his name was Henry Miller; twenty-three years old; that he worked for David Spangler in 1873 and 1874, and that his father died about fifteen years ago. Do you know him, and is he the son of George Miller, who was killed on the railroad?

A. Yes, sir.

Q. 18. Do you know Mr. John M. Fisher, who lives near Eichinger's mills, York county, and did you visit his place one Sunday last summer?

[*Objected to as leading, especially as to the time.*]

A. Yes, sir.

Q. 19. Tell me, as near as you can, what time in the summer it was—what kind of farm work was going on there?

A. They were making hay. Mr. Fisher was about half done making hay.

Q. 20. While you were there on that visit, did you see Mr. and Mrs. Jacob Evans and Mr. John C. Comfort?

[*Objected to as leading.*]

A. Yes, sir.

Q. 21. If you heard any conversation between those three persons, will you state what it was?

[*Objected to as incompetent and calling for hearsay testimony, and also because no foundation has been laid for the question by any question to Mr. Evans, when he was upon the stand in November last, relating to the subject, although Mr. Comfort was still in the employ of complainants; and also because immaterial, irrelevant, and remote.*]

A. Well, I was over at Mr. Fisher's, and Mr. Fisher and I walked out over the farm—and Mr. Garman. And then we came in and went into the house and took our dinner. Then we went over the meadow there, about a hundred yards, and sat on the fence by the road. While we were sitting there, Mr. Evans and Mrs. Evans came along hunting their boy; and then they found the boy up at Conley's; and then they came down to where we were sitting on the fence. While we were sitting on the fence there, comes Mr. Comfort along. Mr. Comfort said to Mrs. Evans—talked a few words to her, and to Mr. Evans, too. He asked Mr. Evans how his mind run on the talking machine, and Mr. Evans said it runs about the same as it did before. He said he didn't believe he had one there, and never seen one there. Then we sat there a little while, and then Mr. Comfort passed by and went on about his business.

[*The same objection is made to the answer.*]

Q. 22. You say Mr. Comfort came along. How did he come—on foot, or how?

A. He came in a buggy with two horses.

Q. 23. Was his sister with him in the buggy?

A. I don't know who she was. She was a lady, but who she was I can't tell you—some lady.

[*Deposition objected to for the reasons above stated.*]

Cross-examination by Mr. Dixon, de bene esse:

Cross-Q. 25. Have you given the precise conversation that you say occurred between Mr. Comfort and Mr. Evans on that occasion?

A. Yes, sir.

Cross-Q. 26. The words you have given were the words used by Mr. Comfort and by Mr. Evans, were they?

A. Yes, sir.

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Cross-Q. 27. Were those precise words all the words of the conversation between Mr. Comfort and Mr. Evans that you now remember?

A. Yes, sir.

Cross-Q. 28. You don't remember, then, what the conversation was between Mr. Comfort and Mrs. Evans?

A. No, sir.

Cross-Q. 29. You have stated that he talked with her. How happens it that you don't remember what was said?

A. Well, she was on the other side of the road—on the other side of the buggy.

Cross-Q. 30. Do you remember distinctly that you didn't hear, at the time, the words that passed between Mr. Comfort and Mrs. Evans; or, on the other hand, did you hear them, but have forgotten them?

A. I didn't hear them.

Cross-Q. 31. How close to the buggy were you?

A. Well, the buggy was pretty near on the other side of the road, and I was on this side.

Cross-Q. 32. How wide was the road there?

A. Well, I didn't step it. I couldn't tell you that.

Cross-Q. 33. You are so familiar with the premises, you can tell us about how wide the road was?

A. It might have been thirty-five or forty feet.

Cross-Q. 34. Do you mean it was about that width?

A. Of course I mean it, or I wouldn't say it.

Cross-Q. 35. How near the fence, across the way from where you were, was Mr. Comfort's buggy at that time?

A. How far the buggy was from the fence? It might have been thirty-five and forty feet away.

Cross-Q. 36. Then it was the width of the road from that fence, was it?

A. Pretty near, on the one side.

Cross-Q. 37. Both sides of the road were fenced, were they?

A. Yes, sir.

Cross-Q. 38. Then, as you have stated that the road was thirty-five or forty feet wide, and that Mr. Comfort's buggy was thirty-five or forty feet from the fence, across the way from where you were, that would place the buggy jammed up against the fence where you were, would it not?

[Objected to as an entire misstatement of the witness' testimony, the meaning of his answer being perfectly clear and obvious; and complainants further object to the defendants creating or leaving an appearance of confusion, which they could remove if they wanted to, and then undertaking to badger the witness about it.]

Counsel for defendants does not understand how there can be "confusion" if the meaning of the witness be "perfectly clear and obvious."

Complainants reply that the appearance of confusion arises from interpreting the questions in one sense, when the witness plainly answers them with a different understanding.]

A. Well, if the road wasn't any wider than that—it may have been wider, for all I know.

Cross-Q. 39. To prevent all possible misconception, I will again ask you how far was Mr. Comfort's buggy at that time from the fence across the way from where you were?

[Objected to as ambiguous and obscure.]

A. Well, about thirty-five or forty feet, I guess, the buggy was away, as near as I can tell.

Cross-Q. 40. Away from where you were, or away from the fence which was across the way from you?

A. Away from the fence, as I said before.

Cross-Q. 41. When Mr. Comfort drove up and stopped and had that talk, what were you talking about just before his arrival?

A. We were talking about haymaking, and one thing and another.

Cross-Q. 42. Well, what was said by each of you?

A. Well, I don't know that there was much of anything said. We talked about hauling in hay, is all I remember.

Cross-Q. 43. You don't remember the precise conversation?

A. I mind of what Evans and Comfort was talking about.

Cross-Q. 44. It seems that you are able to remember the precise words spoken by Mr. Comfort and Mr. Evans, but you are unable to remember the words of the conversation just before, in which you yourself took a part. Am I correct?

A. Oh, I told him what went before. We were talking about haymaking, and one thing and another.

Cross-Q. 45. Yes; the subject of the conversation you say was haymaking, but you haven't given the precise language used in that conversation; have you?

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A. I said we were hauling in hay, didn't I? or talking about hauling in hay on Monday.

Cross-Q. 46. You told us the subject of the conversation, but what I ask is the precise language used by each of you in talking about hauling in hay.

A. Well, Mr. Fisher said he had about ten loads of hay laying, and I told him I had about eight laying, and he said if it was a nice day he could get his in to-morrow; I told him I could, too.

Cross-Q. 47. And you just now remember, do you, that those were the precise words used by you and Mr. Fisher?

A. Well, they just happened to come to my mind now.

Cross-Q. 48. And you remember distinctly and positively, do you, that these words about the number of loads of hay were spoken by you and Mr. Fisher neither when you and Mr. Fisher "walked out over the farm," nor when you came in and took dinner, nor afterwards, except only just before Mr. Comfort drove up?

A. It was some time before he drove up; yes, sir.

Cross-Q. 49. What I have been asking you is, what were the words of the conversation taking place between you just before Mr. Comfort drove up?

A. Well, I told him what it was.

Cross-Q. 50. But you just now stated that this conversation about the hay occurred some time before Mr. Comfort drove up, and, therefore, I repeat the question.

[Question repeated.]

A. What does he call "some time," I would like to know.

Cross-Q. 51. You used the expression "some time before,"—don't you know it does not mean "just before"?

A. I said some time before, but I didn't say how much time; it may have been only five minutes, or it might have been only two minutes; we may have been sitting there and not saying anything, for what I know.

Cross-Q. 52. And that is all you know about it, is it?

[Question objected to as unmeaning, ambiguous, and obscure.]

A. What does he mean by "about it?"

Cross-Q. 53. I mean what you just said, that you might have been sitting there and not saying anything, for what you knew.

[Same objection.]

A. At the time, of course—we were sitting there on the fence; of course, we might have been sitting there and not saying anything at all just at the time.

Cross-Q. 54. The fact is you don't remember how that was; is not that so?

[*Same objection.*]

A. What was "that?"

Cross-Q. 55. Why, whether you were talking at all, or, if you were talking, just what was said just before Mr. Comfort drove up.

[*Same objection.*]

A. I don't mind that there was anything said just before he drove up more than what we were talking of before—about the hay; I don't mind of anything.

Cross-Q. 56. And you remember that you didn't have a talk about the hay or the number of loads, when you and Mr. Fisher walked out over the farm before dinner?

A. No, sir; we had no talk about the number of the loads of hay, before dinner, nor any talk about hay before dinner that I mind of.

Cross-Q. 57. What did Mr. Evans say about hay matters while you were sitting on the fence and talking?

A. I don't think he said anything at all about it that I heard.

Cross-Q. 58. Was this subject of hay matters talked about before Mr. Evans came up, or did the subject start after he came up?

A. Before.

Cross-Q. 59. How long before Mr. Evans came up was it that Mr. Fisher told about having ten loads of hay lying, and you said you had eight?

A. Well, I haven't just charged my mind to that—just how long it was before or after; it may have been five or ten minutes for all I know, maybe not so long.

Cross-Q. 60. You stated, in answer to the preceding question, that the hay matters were talked about before Mr. Evans came; please give us your best recollection as to about how long before he came this conversation occurred.

[*Objected to because the witness has fully stated his recollection, and the subject is exhausted.*]

A. About how long? It might have been five or ten minutes, and it mightn't have been that long.

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Cross-Q. 61. How long was it after Mr. Evans came that Mr. Comfort drove up?

A. About five minutes or ten. I don't think it was more than five minutes after Evans came there till Mr. Comfort came driving along.

Cross-Q. 62. You have stated, in answer to cross-question 55, "I don't mind that there was anything said just before he [Mr. Comfort] drove up, more than what we were talking of before—about the hay." Mr. Fisher testified on Saturday, (cross-questions 59, 62, and 63,) that at the time Mr. Comfort drove up they were talking about that boy that went away, and said nothing about any talk about hay or loads of hay; was he mistaken, or is your memory now refreshed so that you agree with him?

[Objected to upon the ground that what is referred to as an appearance of mistake is entirely of counsel's own creation.]

A. Mr. Fisher said so, did he? I don't mind of anything that was said about the boy just at that time.

Recess until 2.15.

2.15 o'clock, P. M.

Present same counsel, and also Mr. Church, for respondents.

Cross-Q. 63. Who were seated on the fence when Mr. Comfort was there?

A. Me and Mr. Fisher and Mr. Garman—that was about all.

Cross-Q. 64. What was the order in which you three sat on the fence?

A. Indeed, I couldn't tell you any more, but I think I was sitting at the one end, and Mr. Fisher in the middle, and Mr. Garman at the other end.

Cross-Q. 65. Are you sure about that?

A. Well, I wouldn't just be so sure about it.

Cross-Q. 66. Where was Mr. Evans when he was talking to Mr. Comfort?

A. He was standing down there on the road.

Cross-Q. 67. Was he talking with Mrs. Evans when Mr. Comfort came up?

A. I don't think he was; I think he was talking to Mr. Fisher.

Cross-Q. 68. Are you sure about that?

A. Yes, sir; I am pretty sure about that.

Cross-Q. 69. What was Mrs. Evans doing?

A. She was standing there in the road.

Cross-Q. 70. Was she talking with any of you?

A. Well, what time—when Mr. Comfort came along, or before that?

Cross-Q. 71. Just before Mr. Comfort drove up.

A. I don't think she was talking to any of us; she might have been talking to Mr. Fisher.

Cross-Q. 72. You have said that Mr. Evans was talking to Mr. Fisher—what makes you think that Mrs. Evans also might have been talking to Mr. Fisher—what gives you that impression?

A. Well, because they are neighbors, and—I ain't sure that she was talking to him or not; she might have been and again she mightn't have.

Cross-Q. 73. Were Mr. and Mrs. Evans standing there together at that time?

A. Well, I don't know whether they were just standing together, or whether they were standing ten or twelve feet apart, or six feet, or only five feet; they were standing around there somewhere; they were there, anyhow.

Cross-Q. 74. As I understand, then, you don't remember whether they were together, or five or six feet apart?

A. No, sir; but they were there.

Cross-Q. 75. How happened it that when Mr. Comfort drove up Mrs. Evans was standing on one side of the buggy and Mr. Evans was on the other side?

A. Well, she went to the right-hand side, and he came to the left-hand side of the road; she was, maybe, a little apart from Mr. Evans; she went on the right-hand side and he came on the left-hand side where we were setting on the fence.

Cross-Q. 76. Will you tell us how it happened that, while Mr. Comfort and Mrs. Evans had a talk, you didn't hear what was said, although she stood just on the other side of the buggy?

A. Well, Mr. Evans came right over where we were setting on the fence, and she was a little further down the road.

Cross-Q. 77. How far was she from where you were sitting?

A. She may have been four or five steps, or six or seven—maybe further.

Cross-Q. 78. And yet, as I understand you, although she was so near to you you didn't hear the conversation with her.

A. No, sir.

Cross-Q. 79. How far was she from the buggy in which Mr. Comfort was sitting?

A. She was just alongside of the buggy.

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Cross-Q. 80. And Mr. Evans was just alongside of the buggy on the other side, was he?

A. No, sir; he was up there standing on the ground on the left-hand side of the road, where we were setting.

Cross-Q. 81. Was he about opposite the buggy—I mean about opposite where Mrs. Evans stood on the other side?

A. No, sir; he was up about six or seven steps further; maybe eight of them, as near as I can tell you; up where we were setting on the fence.

Cross-Q. 82. How far from the horse and buggy was he standing? I mean how far in the direction towards the fence upon the side where you were sitting.

A. Well, he was a step or two from the fence. Mr. Comfort drove up right within a foot or two of the fence.

Cross-Q. 83. Near what part of the horse or buggy was he standing?

A. Just about where the front wheel was, he was standing. I think he had—yes, I am pretty sure he had—his foot up on the wheel.

Cross-Q. 84. Was the horse's head turned along in the direction towards where you were sitting, or was it facing the other way?

A. Facing up the way the road went—up towards Conley's.

Cross-Q. 85. Was that towards you or from you?

A. Towards where I live, or towards where I was sitting on the fence?

Cross-Q. 86. Towards where you were.

A. Their heads were just past me, going from me.

Cross-Q. 87. Then, as Mrs. Evans was right alongside of the buggy, as you have stated, you were only separated by the width of the buggy, or, as you have stated, a short distance?

A. I don't mind of saying that. I said that Mr. Comfort came driving by and Mrs. Evans was about six or seven steps below us, and Mr. Comfort spoke to her awhile and then came on up to Mr. Evans, who was standing up where we were sitting on the fence.

Cross-Q. 88. Didn't you say she was right alongside of the buggy?

A. She was when she was talking with Mr. Comfort—alongside of the buggy.

Cross-Q. 89. How long did Mr. Comfort stop there on that occasion?

A. Well, he didn't stop there very long; it might have been a couple of minutes—maybe five minutes.

Cross-Q. 90. Was the conversation general during that time?

. Yes, sir.

Cross-Q. 91. Who took part in it?

A. Nobody but Mr. Evans and Mr. Comfort.

Cross-Q. 92. What else did they talk about during that time besides the telephone?

A. Nothing, that I remember of, but the talking-machine.

Cross-Q. 93. You heard the whole conversation?

A. I heard just what Mr. Comfort said to Mr. Evans—that is all I heard. If he said anything more I didn't hear it.

Cross-Q. 94. During this talk of from two to five minutes, who did the most of the talking, Mr. Comfort or Mr. Evans?

A. Why, I guess one done about as much as the other, as near as I could tell.

Cross-Q. 95. During the conversation, about how many times did Mr. Comfort speak to Mr. Evans?

A. Well, all he said—maybe six or seven words, or maybe more; I didn't just count the words.

Cross-Q. 96. Of course you can't tell the number of words, but in a conversation lasting that length of time I ask about how many times in the conversation Mr. Comfort spoke or replied to Mr. Evans, in carrying on that conversation.

A. I didn't count the words. Well, Mr. Comfort just asked Mr. Evans how his mind was to-day, and Mr. Evans said just about the way it was before: "I never saw one there, and I didn't believe he had one."

Cross-Q. 97. Do you remember what else was said in the conversation?

A. No, sir; I do not.

Cross-Q. 98. How happen you to remember this and not remember the rest of it?

[Objected to as assuming that there was any more than what the witness has distinctly testified to.]

The witness having just stated that he did not remember what else was said in the conversation, counsel for defendants protests against this unwarrantable interference with the cross-examination, done with an obvious purpose.

Complainants object to the persistence with which statements are put into the question so blindly that the witness is not likely to notice them; to the manner in which his answers are attempted to be construed into an approval of statements that his attention is not called to, and to the manner in which

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statements he has not made or knowingly assented to are assumed to have been made by him, and then stated to him as if they had been.]

A. Well, I heard that Mr. Evans was brought on the other side last winter, and heard him say that he said that he saw it.

Cross-Q. 99. But why didn't you remember the rest of the conversation as well?

A. Well, because it seemed so funny to me that Evans said one thing and came right down here and said another thing. I thought it a little funny.

Cross-Q. 100. But isn't that a reason why you should try to recollect, if possible, the rest of the conversation?

A. Well, Mr. Garman he came over to my place, and said: "Do you recollect what Mr. Evans said last summer over there when Mr. Comfort came over there? And Garman said, "Do you mind what Evans told Comfort?" And then Garman said that he had heard that Evans was over at Harrisburg and swore that he saw it.

[Answer objected to as hearsay and not responsive to the question.]

[Question repeated.]

A. Well, it just appeared so funny to me that Mr. Evans should have said that, and it just kind of beared on my mind.

Cross-Q. 101. But isn't that a reason why you should *try* to recollect the rest of the conversation?

[Objected to as above, and as argumentative.]

A. The rest? What is the rest?

Cross-Q. 102. You said in answer to cross-question 97, which was: "Do you remember what else was said in the conversation?" Answer, "No, sir; I do not." Is not what you have stated a reason why you should *try* to remember what else was said?

[Same objections.]

A. That was the time that Evans and Comfort was talking, does he mean?

Cross-Q. 103. That was the conversation we were talking about.

A. No, sir; I don't mind what else was said besides that, only Mr. Garman said, "Do you mind what Evans said?" and I told him I did.

Cross-Q. 104. Can you recall to mind whether, during that conversation, Mr. Evans asked Mr. Comfort, "Who is going to beat?" or, "Who

is going to come out ahead in that telephone suit?" or anything in substance like that?

A. No, sir; I do not.

Cross-Q. 105. Did you, in your answer to cross-question 96, give the precise language in which Mr. Evans replied to Mr. Comfort? [Examiner reads said answer to the witness.]

A. Yes, sir.

Cross-Q. 106. When you gave the language on the direct examination you transposed the sentence so that it reads: "He said he didn't believe he had one there, and never seen one there." Which version do you now say is correct? I ask this, as you say you have given the precise language.

[*Objected to as frivolous.*]

A. By that do you mean what I said first and what I said last—what Mr. Evans said to Mr. Comfort, do you mean? Is that what you want to know?

Cross-Q. 107. I want to know which version of the two you have given is the precise language you now say was used by Mr. Evans.

[*Same objection.*]

A. Both.

Cross-Q. 108. In the language he used, and which you so distinctly remember, did he say, "He didn't believe he had one there," before or after he said "he never seen one there?"

[*Same objection.*]

A. He said he never seen one there.

[*Question repeated.*]

[*Same objection.*]

A. He said he never seen one there.

[*Question repeated.*]

[*Same objection.*]

A. He said he never seen one there.

[*Question repeated.*]

[*Same objection.*]

A. I don't understand that; all I heard him say—he said he didn't see none there.

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Cross-Q. 109. Granting that he said he didn't see none there, did he say he didn't believe he had one there, before, or after he said he didn't see none there?

[*Same objection.*]

A. The time he talked to Comfort, do you mean?

Cross-Q. 110. That is what we are talking about.

[*Same objection.*]

A. Well, when Mr. Comfort came to him he asked Mr. Evans how his opinion was on the talking-machine, and Mr. Evans said he didn't believe there was one there, and he never seen one there.

Cross-Q. 111. In the precise language which you attempt to give, did Mr. Comfort ask Mr. Evans "how his mind run on the talking-machine," or "how his mind was to-day," or "how his opinion was on the talking-machine?"

[*Same objection.*]

A. Mr. Comfort said to Mr. Evans, "How does your mind appear to run to-day on the talking-machine?" and Mr. Evans said it runs about the same as it did before; he had never seen one and didn't believe he had one.

Cross-Q. 112. You said, in answer to cross-question 105, that you gave the precise language in which Mr. Evans replied to Mr. Comfort; that was—Mr. Evans said: "Just about the way it was before;" was that his language, or was it "It runs about the same as it did before," as you have just stated?

[*Same objection.*]

A. "It runs the same as it did before."

Cross-Q. 113. Mr. Jacob Evans, on his first examination, had testified in answer to direct question 83, [page 984, evidence of complainants in reply,] regarding Mr. Drawbaugh's telephone or talking-machine, as follows: "Yes, I heard different ones talk about it; Dellinger and I had talked about it, and William Fettrow, that is Dan Fettrow's son, talked about being down there and talking through it—him and Dan together, and Harry Drawbaugh, Dan's son; I heard, or was told by other ones, that Harry and Dan had been at it, talking through it; we had different conversations; as near as I can get at it it was some time during 1877 when this talk was done. The talk that I heard about it was in the store and the mill office—those two places." This was Mr.

Evans' testimony a year ago last January, given in behalf of the complainants and never afterwards contradicted by the defendants, and yet I understand you to say that only last summer you remember hearing Mr. Evans say to Mr. Comfort, complainants' agent, speaking about Mr. Drawbaugh's talking-machine, that "he didn't believe he had one there." And you say you remember that in the same breath he said his mind run "just about the way it was before;" does it not appear to you inconsistent that Mr. Evans should have made both of those statements at the same time?

[Question objected to because it is purely argumentative, and merely asked the opinion of the witness upon the value of evidence; because it misstates the facts and the evidence, particularly in this: that Evans testified for the complainants that he never heard of Drawbaugh's talking-machine until long after the Bell patent, and his affirmance of that last summer was obviously a reiteration of his statements that he had never heard of it at any time material to this suit, and thus the two statements are not inconsistent, but exactly accord; because his answer 83, quoted, was in effect a statement that he never heard of it until a year after the Bell patent, whereas the defendants called him for the express purpose of having him contradict that by swearing that he had heard of it, seen it, and talked through it before the Bell patent.]

Counsel for defendants, for reply to the argument of complainants under the guise of an objection, refers simply to the record of Mr. Evans' testimony and the quotations therefrom already made, and states that there is not in said deposition a single reference to the Bell patent, nor was the witness' attention in any way called to the Bell patent, the pertinent fact referred to being that Mr. Evans had heard and talked about Mr. Drawbaugh's talking-machine during 1877.

Complainants' counsel rejoins that it is apparent that the force of Evans' 83d answer was that he had never heard of it before 1877, which was a year after the Bell patent; and in order to show not only that this is the plain and obvious meaning of it, but that the defendants understood this to be its meaning, and for that reason called Evans in sur-rebuttal in the attempt to make him contradict it, he refers to the 24th question put to Jacob Evans by the defendants' counsel on page 90 of defendants' sur-rebuttal, as follows:

"Q. 24. When you testified in behalf of the complainants last winter in Philadelphia, you stated that you then had no recollection of ever seeing or hearing of Mr. Drawbaugh's talking-machine invention prior to the year 1877. I suppose that the facts which you have just testified to here to-day did not occur to your memory at that time; am I correct?"

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Counsel for defendants states that notwithstanding the inferences drawn by counsel for complainants, the fact remains that Jacob Evans heard of and talked about Mr. Drawbaugh's talking machine in 1877, and had so testified in behalf of complainants.

Complainants' counsel replies that if Jacob Evans had continued of the same mind that he was when he testified at Philadelphia, the defendants would not have called him at Harrisburg in their sur-rebuttal, and that they called him there because he had changed his mind.

Counsel for defendants state that as to the pertinent point of Mr. Evans' knowledge of the telephone in the year 1877, no evidence tending to show that he did not know of it in that year has been offered by either party.

Complainants' counsel instructs the witness that if respondents' counsel had correctly stated to him the facts, he would see that there was no discrepancy and no inconsistency.

Counsel for defendants protests against this interference and instruction of the witness as to his answer.]

A. Well, I never heard him saying anything about the talking-machine more than what he said to Mr. Comfort.

Adjourned until May 13, 1884, at 10, A. M.

May 13, 1884, 10, A. M.

Examination resumed.

Present, same counsel, and also Mr. Smith and Mr. Howson for complainants, and Mr. Jacobs for respondents.

Cross-examination of George Dillow by Mr. Dixon continued:

Cross-Q. 114. You stated yesterday, in answer to cross-questions 63, 64, 66, and 88, that when Mr. Evans was talking to Mr. Comfort on that occasion "he was standing down there on the road," and "just about where the front wheel was, he was standing. I think he had—yes, I am pretty sure he had—his foot up on the wheel," and that the rest of you—Mr. Fisher, Mr. Garman, and yourself were seated on the fence. And also, in answer to cross-questions 70 and 73, that just before Mr. Comfort drove up Mr. and Mrs. Evans were standing around there somewhere. Mr. John M. Fisher, who has testified about this matter, has stated, in answer to cross-questions 44, 45, and 46, that Mr. Evans, at that time when Mr. Comfort drove up, was sitting on the fence with you; was he mistaken in this matter, or have you made the mistake?

[*Objected to as frivolous.*]

A. I said Mr. Fisher, Mr. Garman, and myself were sitting on the fence when Mr. Comfort came driving up, and Mr. Evans and his wife were standing on the road.

Cross-Q. 115. You stated, in answer to cross-question 61, asking how long it was after Mr. Evans came that Mr. Comfort drove up, "about five minutes or ten. I don't think it was more than five minutes after Evans came there till Mr. Comfort came driving along." Mr. Fisher, in answer to cross-question 49 of his deposition, stated that Mr. Evans had been there fifteen or twenty minutes before Mr. Comfort came; was he mistaken or did you make the mistake?

[Objected to as frivolous.]

A. I said Mr. Evans was there about five minutes or ten, and I think it wasn't longer than five minutes till Mr. Comfort came driving along.

Cross-Q. 116. Then Mr. Fisher was mistaken when he stated that Mr. Evans had been there fifteen or twenty minutes before Mr. Comfort came?

[Objected to as frivolous, and as an incorrect statement of Fisher's testimony, the 29th answer and other parts of which form part of his statement relating to the question.]

Counsel for defendants states that cross question 49 and answer in Mr. Fisher's deposition are as follows :

"How long had Jacob Evans been there before Comfort came?

A. Fifteen or twenty minutes."

And that cross-question 29, referred to, related to the whole time Mr. Evans was there—about half an hour—including the time both before and after Mr. Comfort was there; and that in answer to cross-question 51, Mr. Fisher stated that his recollection was that Mr. Evans was there, after Mr. Comfort left, ten or fifteen minutes, thus making the whole time Mr. Evans was there about half an hour. And counsel asks counsel for complainants if Mr. Fisher did not state that Mr. Evans had been there fifteen or twenty minutes before Mr. Comfort came, and to point out wherein this is an incorrect statement of Mr. Fisher's testimony.

Complainants' counsel replies that the record referred to shows the true meaning of Fisher's testimony, and that he objects to this continued waste of time on the part of defendants, caused by copying one deposition into another, and having the Examiner write out the defendants' argument thereon.]

A. I said that Mr. Fisher, Mr. Garman, and I were setting on the

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fence just about five or ten minutes **before** Mr. Comfort came driving along.

Cross-Q. 117. Was that all the time you had been sitting there when Mr. Comfort drove up?

[Objected to as immaterial and frivolous.]

A. Yes, sir.

Cross-Q. 118. Did you take seats when you first went there?

A. Yes, sir.

Cross-Q. 119. Where did you come from when you went there?

A. From Mr. Fisher's house, across the meadow.

Cross-Q. 120. Was a Mr. Ross there at Mr. Fisher's that day?

A. No, sir.

Cross-Q. 121. You didn't see Mr. Andrew Ross there that day at all?

A. No, sir; I did not; he was in York.

Cross-Q. 122. Was his son, young Andrew Ross, there that day?

A. I don't know young Andrew Ross.

Cross-Q. 123. Was any son of Andrew Ross there that day?

A. No, sir; not that I seen.

Cross-Q. 124. You saw no boy there by the name of Ross that day?

A. No, sir.

Cross-Q. 125. You are just as positive about that as about any of the statements you have made, are you?

A. As near as my mind charges me.

Cross-Q. 126. Do you remember the conversation that took place after Mr. Comfort drove away?

A. No, sir.

Cross-Q. 127. You didn't charge your mind, then, with the rest of the conversation?

A. No.

Cross-Q. 128. What led you at that time to charge your mind with the very precise language of the single question and answer between Mr. Comfort and Mr. Evans, which you have here repeated, and not charge your mind, not only not as to the precise language, but not even as to the substance or subject of the rest of conversation, and that immediately following?

[Objected to as frivolous, and because the subject was exhausted yesterday.]

A. Well, I was just setting on the fence when Mr. Comfort came driving along there, and just heard every word he said at that time.

Cross-Q. 129. But what made you charge your mind at that time with the precise language of the single question and answer you have here repeated?

[Objection continued.]

A. Why, because I was just setting there; that is the reason.

Cross-Q. 130. And that is all the reason you have to give, is it?

[Same objection, and objected to as a mere badgering and attempt to confuse.]

A. Yes, sir.

Cross-Q. 131. Did Mr. and Mrs. Evans come from the direction of the pond when they came up to where you were sitting?

A. They came right down from Conley's; that is on this side of the pond—from the pond.

Cross-Q. 132. How long had you been sitting there when they came down from Conley's?

A. Oh, it might have been five or ten minutes.

Cross-Q. 133. Do you mean it *was* five or ten minutes?

[Objected to, as the matter of time is necessarily a matter of conjecture, and the witness has answered the question as fully and fairly as can be required of him.]

A. Well, as near as my mind tells me.

Cross-Q. 134. You have stated, in answer to cross-question 116, that you had been seated on the fence just about five or ten minutes before Mr. Comfort came driving along; you now say that it is your recollection that you had been sitting there five or ten minutes before Mr. Comfort came driving along; then Mr. and Mrs. Evans and Mr. Comfort came up to where you were sitting about the same time, did they?

A. No, sir; I said Mr. Comfort came driving along, and they were standing on the road—Mr. Evans and Mrs. Evans.

Cross-Q. 135. Then they didn't come up to where you were sitting about the same time?

A. Why, they were standing in the road, and when Mr. Comfort came driving along, Mr. Evans went to the left-hand side, and Mrs. Evans went to the other side. She was standing further down the road. And Mr. Comfort, he stopped with Mrs. Evans, and then drove on close up to the fence, where we were sitting.

[Answer objected to as not responsive to the question.]

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Cross-Q. 136. When did you next see Mr. Comfort ?

A. I didn't see Mr. Comfort till about three weeks ago.

Cross-Q. 137. Where was that ?

A. That was right up at my barn. He called me out when I was feeding my horses.

Cross-Q. 138. What time of day, and how long did he stay ?

A. He staid about five minutes. It was about half-past eleven, as near as I can tell.

Cross-Q. 139. When did you next see him ?

A. I seen him next about last Thursday.

Cross-Q. 140. During the interval, did you go over one Sunday and talk with Mr. Fisher about this matter ?

A. Yes, sir.

Cross-Q. 141. Did Mr. Comfort pay you five dollars for that ?

A. He paid me five dollars to go over and see Mr. Fisher and Mr. Garman.

Cross-Q. 142. What did he want you to go over and see them for ?

A. First, to see if they minded what Mr. Evans had said ; and I went over for seed-corn.

Cross-Q. 143. The errand that took you there was to get seed-corn for yourself, was it ?

A. That and the other.

Cross-Q. 144. You talked with them, when you were over there about this old conversation, and about the precise language in the single question and answer you have repeated here, did you ?

A. No, sir ; I just asked him if he minds what Mr. Evans had said, and he told me he did. That was all that was said.

Cross-Q. 145. And Mr. Comfort paid you five dollars just to go over and ask them that single question and answer, did he ?

A. He just said if I would go over—I had to go over for my seed-corn—and he said : “If you will go over, I will give you five dollars.” Them is the very words he said.

Cross-Q. 146. Mr. Fisher has testified, in answer to cross-question 112, that Mr. Comfort came to see him also about three weeks ago. Do you know whether Mr. Comfort saw Mr. Fisher just before, or just after he hired you to see him ?

A. I don't know ; I didn't ask him that.

Cross-Q. 147. Do you know of your own knowledge how much Mr.

Comfort paid Mr. Garman the time he came to see you about this old conversation?

[*Objected to as an assumption without the slightest foundation to support it.*]

A. No, sir; I don't know anything about it—more than what John had told me.

Cross-Q. 148. Who first spoke to you about coming down here to Philadelphia to testify?

A. I think it was Garman, as near as I can tell you. He said he thought we would have to go down.

Cross-Q. 149. Do you know who sent him to you to tell you that?

[*Objected to as an assumption without the slightest foundation.*]

A. No, sir.

Cross-Q. 150. Did he come down to Philadelphia also?

A. Yes, sir.

Cross-Q. 151. Mr. Fisher, Mr. Garman, and yourself have all been here within the last few days, have you?

A. Yes, sir.

Cross-Q. 152. Who were you working for three weeks ago?

A. Working for myself.

Cross-Q. 153. Haven't you been working on the road for the supervisor recently?

A. Yes, sir.

Cross-Q. 154. For how much a day?

A. Well, I don't know; they make their own prices.

Cross-Q. 155. Don't you understand that it is a dollar and a half a day, and is not that what they usually pay?

A. Yes; that is, in some townships, but all townships ain't alike.

Cross-Q. 156. That is about what you expect to receive, isn't it? or haven't you any idea of about what pay you have been working for?

A. They paid me a dollar and a quarter last year. I don't know whether they will pay that this year or not. I can't tell you that.

Cross-Q. 157. Who is the supervisor you have been working for recently?

A. Mr. Mendinghall, as near as I can tell, is what they call him.

Cross-Q. 158. Did you say to Mr. Mendinghall recently in substance: "You don't pay enough, working on the roads. If you only paid as much as John Comfort does, it would pay to work on the roads;" or something of about that meaning?

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A. I don't mind if I did or if I didn't.

Cross-Q. 159. Is that because your memory of recent conversations is poor, that you can't say whether you did or not?

A. Well, I don't mind if I did or didn't.

Cross-Q. 160. Are you a brother of Mrs. Anna McCleaf, whose deposition was taken on behalf of the respondents, and printed on page 445 of defendants' sur-rebutting testimony?

A. Yes, sir; I am her brother.

Cross-Q. 161. As you do not remember whether you did or did not have a certain conversation with Mr. Mendinhal recently, may you not, nine or ten years ago, while you were living at your father's, have had some conversation about Mr. Drawbaugh and his things which you do not now remember?

A. No, sir; all I know is, Mr. Drawbaugh came after me three years ago; I think it was in Bridgeport in the saddler-maker's shop, and he asked me if I knowed anything about the talking-machine, and I told him I didn't; all I knowed was he had a good many things there, and that is what I told him.

[The answer objected to as not responsive to the question.]

Cross-Q. 162. Is it not possible that eight or ten years ago you had conversations with others in which Mr. Drawbaugh was mentioned, and you have now forgotten some of those conversations?

A. No, sir; I don't mind anything of it—that I ever heard anything saying about talking-machines.

Cross-Q. 163. You have stated that you do not remember the conversation that took place after Mr. Comfort drove away from you while you were sitting on the fence at Mr. Fisher's last summer; do you now mean to say that there could have been no conversations that took place with you eight or ten years ago in which Mr. Drawbaugh was mentioned, and which you might have forgotten?

A. There might have been, but I don't mind anything of it.

Re-direct by Mr. Storrow:

Q. Q. 164. Was your work on the road this spring in the way of working out your road-tax, or not?

A. Yes, sir; it was.

Q. Q. 165. In your 148th answer you say that mention was made between you and Mr. Garman about coming down to Philadelphia to testify; how long ago was that?

A. Indeed, I can't tell how long ago.

Q. Q. 166. Was it recently—within a few weeks— or was it a long time ago?

A. It might have been three or four months.

Examination taken, reduced to
writing, and by the witness affirmed
and subscribed to before me this
13th day of May, A. D. 1884.

FRED. M. OTT,
Examiner.

GEORGE DITLOW.

GEORGE DITLOW *re-called*:

Examined by Mr. Storrow:

Q. Q. 167. You have just told me that you want to make a correction in your testimony ; please do it.

[*Counsel for defendants objects, because, after the witness had signed his deposition, and left the room and after other conversation, counsel for complainants requested us to wait a moment, and then went out and returned with the witness.*

Complainants' counsel state that the witness just sent him down word that he wished to make a correction, and that in consequence of that he asked the parties to wait, went for the witness, asked him what he wanted to correct, and brought him back, the correction relating to something that he had not talked to the witness about before.]

A. Why, Mr. Garman said that Bob Ross was over there that Sunday.

Q. Q. 168. Has Mr. Garman just told you this since you signed your deposition ?

A. Yes, sir.

Re-cross-examined by Mr Dixon:

Re-cross-Q. 169. How came you to speak to Mr. Garman about what you had testified to after you had left the stand and before he took the stand ?

A. He said that Bob Ross was over that Sunday.

Re-cross-Q. 170. How came he to say this to you within two or three minutes after you left the stand, when he was in another room and not present when you were testifying ?

A. He just asked me if they asked me about Mr. Ross—of any Mr. Ross being over there—and I told him that I don't mind of any Mr. Ross being over there.

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Re-cross-Q. 171. Well, how did he know that anything had been said by you about Mr. Ross when on the stand?

A. Why, I told him that they asked me, and I didn't remember if he was, or if he wasn't.

Re-cross-Q. 172. How came you to tell him this before he took the stand to testify about the same matters?

A. He asked me.

Re-cross-Q. 173. Give his precise words in asking you.

A. Well, he just asked me if they asked about Mr. Ross—Mr. Bob.

Re-cross-Q. 174. When he asked that question of you, was that the first time that Mr. Ross' name was mentioned during your conversation up-stairs?

A. Yes, sir.

Re-cross-Q. 175. How did he know that anything had been said about Mr. Ross while you were on the stand, and he was in another room and not present?

A. He just asked me if they asked me about Mr. Ross.

Re-cross-Q. 176. Who were present in that room while you were there?

A. No one but Mr. Garman.

Re-cross-Q. 177. How did you get your message down to counsel present here?

A. Mr. Howson.

Re-cross-Q. 178. Did Mr. Howson come in while you and Mr. Garman were talking this evidence over?

A. Yes, sir.

Re-cross-Q. 179. Well, what did he say about it when you told him about your difference with Mr. Garman on the subject of Mr. Ross?

A. Well, he said I should go down and make it right.

Re-cross-Q. 180. In answer to your cross-question 170, you stated that "he (Mr. Garman) just asked me if they asked me about Mr. Ross—of a Mr. Ross being over there—and I told him that I don't mind of any Mr. Ross being over there;" you stated the same thing positively while you were upon the stand, but now do you remember that Bob Ross was there?

A. No, sir; I don't mind of any Bob Ross being there.

Re-cross-Q. 181. You then simply came back to the stand, not to change your testimony in any respect, but only to state that Mr. Garman said that Bob Ross was there that Sunday; is that the fact?

A. Yes, sir.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 13th day of May, 1884.

FRED. M. OTT,
Examiner.

GEORGE DITLOW.

Recess until 2.30, P. M.

[Complainants' counsel state that when the time for evidence in rejoinder was fixed, the parties expected to go on at about the same rate of speed that had been found practicable during the winter, and that would have enabled complainants to examine about seventy witnesses; that the testimony, for reasons some of which appear from an inspection of the record, has not been able to proceed as rapidly as they expected; that complainants in the second week of taking this testimony, and subsequently, in order to expedite matters, proposed that a shorthand writer should be employed, as provided by the rules of the Circuit Court for the Eastern District of Pennsylvania, and proposed that two depositions be taken simultaneously before two Examiners in adjoining rooms, there being already two Examiners appointed in the case, and several counsel present on the part of defendants, as appears by the record; and, also, proposed that evening sessions be held as has heretofore been done, from time to time, in this case. The defendants objected to all these modes of expediting the cause. The complainants, under the circumstances, have determined to omit many witnesses whom they intended to coll, but complainants' counsel think it proper that six or eight more witnesses should be examined, and they give notice that they shall continue the examination, from day to day, until these are completed, working as many hours a day as may be practicable, and give notice to the defendants's counsel to attend and cross-examine.]

Counsel for defendants reply that in the absence, by reason of sickness, of the senior counsel for defendants, and with only one of their number having any previous connection with the case or familiarity with the testimony, they very properly declined to conduct two examinations at the same time; and, while they consent to evening sessions, they must abide by the time fixed for closing complainants' proofs in rejoinder, set at May 15, as appears of record on page 1140, defendants' sur-rebutting testimony, especially as so much time has been consumed by the complainants at the

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present sitting in taking testimony incompetent in rejoinder, and covering the ground gone over at length in reply, as witness the depositions of S. C. Wilson, John Kahney, and others; and they hereby notify the complainants that they shall object to any depositions taken by complainants after their time has expired.

Complainants' counsel reply that they have already sufficiently stated why and how the testimony already offered by them is competent evidence in rejoinder.]

DAVID COWENS, *being produced, sworn, and examined, saith:*

Examined by Mr. Storrow:

Q. 1. Are you the same David Cowens who testified for defendants last January, at Harrisburg, Pa., and whose deposition is printed in their sur-rebuttal record, page 695?

A. Yes, sir.

Q. 2. In your former deposition you stated that Andrew Lilly moved into your tenant-house in the spring of 1877, and lived there two years, stating, also, that you did not have with you to refer to the book which contained his account. I now ask you to look at the receipts for rent received from John H. Howard for 1877, purporting to be signed by David Cowens, to state in whose handwriting these receipts are, and then to tell me who lived in your tenant-house in 1877.

A. They are in my handwriting. John H. Howard lived there at the time that them receipts was wrote.

Q. 3. In your deposition you testified as follows, (page 704:)

"Cross-Q. 61. Are you able to fix the date when he [Mr. Kissinger] put that ram in?

A. I ain't certain; I think that it was in the fall of 1876; I think it was late that fall, but I wouldn't be real certain about it."

The first time that you ever saw that ram was anybody doing any work about it; and if so, who, and what was he doing?

A. Mr. Jesse Wagner was walling up the pit where it set in, when I first saw it.

Q. 4. Mr. Jesse Wagner was called as a witness for complainants, (complainants' proof, vol. ii, page 1255,) and he testified, and showed by the entry in his account-book, that he walled up the pit around that ram in November, 1878; does that date agree with your present recollection, or not?

[Objected to as argumentative, and tending to influence the opinion of the

witness by a statement made by one of complainants' witnesses, and entered upon the record long prior to the time that the witness gave his independent recollections when last upon the stand.]

A. It does, with my present recollection.

Q. 5. In your deposition you testified that in the spring of 1875 you put in on your farm some water-pipes made out of hemlock boards nailed together; does that agree with your present recollection, or not?

A. Yes, sir; that agrees.

Q. 6. Did you afterwards have any trouble with those pipes, from their leaking or getting stopped up; and if so, what was the cause of trouble?

A. They got stopped up with roots that grew in and choked them up and stopped the water from running into the spring-house.

Q. 7. About how long after they were put in did this trouble come? How long would it take the roots to grow into them and make this trouble?

[The last part of the above question objected to because calling for a matter of opinion, and as leading as to the length of time asked about in the first part of the question.]

A. Well, I suppose it would take them a couple of years to find the wet pipes—find the wet ground where the pipe was put in. I suppose it was a couple of years after they were put in—I don't know, but I suppose so—before we had any trouble at all.

Q. 8. After the pipes had got troublesome from this cause, did you do anything to them to make the water run right; and if so, what?

A. I dug down and hunted the pipe up and opened it—took the top off, and found it was full of roots.

Q. 9. Did you, about that time, consider whether you would put in any different kind of pipe?

[Objected to as grossly leading.]

A. I did.

Q. 10. What kind of pipe did you think of putting in then, and why didn't you do it?

A. I thought of putting in bored pipe, out of logs.

Q. 11. Why didn't you put them in?

A. My timber was too small to make them; I couldn't find enough timber on mine to do it.

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Q. 12. While you were considering that matter at that time, did you go to see anybody who was boring pipe; and if so, who?

[*Objected to as grossly leading, especially under the circumstances.*]

A. Yes, I went to see Kissinger. He had an auger there, boring pipe.

Q. 13. Is it your present recollection that you saw Kissinger boring pipe, and saw an auger there, at the time when you first put your pipe in, in the spring of 1875, or at the time when you had occasion to repair your pipes on account of the roots growing into them?

A. My present recollection is that it was when I had to repair my pipes on account of the roots growing in; at first I was almost certain it was when I first put them in, but since I have studied it up I think I was mistaken.

Q. 14. Give me your recollection as to how long it was before you saw Wagner stoning up the ram-pit that you saw Mr. Kissinger boring at the pipe.

[*Objected to as calling for mere guess-work.*]

A. I don't know how long it was, but I think it was in the spring that I saw him boring at the pipes, and Wagner walled up the pit in the fall; I think so, but I have no dates; I have just guess-work for that.

Q. 15. When you testified last winter, did you have in mind the fact of the trouble with your pipes and the repairs to them, which you have now stated?

A. I don't think I did have anything in my mind about it at that time.

Cross-examined by Mr. Church:

Cross-Q. 16. When did it first come into your mind that you had made a mistake in your former testimony in regard to the time when you saw the pipes being bored at Mr. Kissinger's?

A. Well, it has been some time, already, since the Heisley boys was brought down here. I seen them and they gave me an account of it—how there had been a mistake in their calculation—and I had been studying over it.

Cross-Q. 17. Which of the Heisleys did you see?

A. I saw Peter.

Cross-Q. 18. Any of the rest of them?

A. No; I didn't talk to any but Peter.

Cross-Q. 19. When and where did you have this interview with Peter?

A. I met him on the road one day after he had been down here, and he was giving me an account of it—of his mistake.

Cross-Q. 20. State, as near as you can, what date it was when you met him?

A. I couldn't tell the date; I have no date to it; it was soon after he had been down here.

Cross-Q. 21. Was it last week?

A. I think it was week before; I ain't sure; it wasn't last week; it was week before, I guess.

Cross-Q. 22. Was it in the fore part, or the latter part of the week?

A. I don't know that.

Cross-Q. 23. Where were you going when you met him?

A. I met him right in the road, close to the house there; we live right close to the road, and he was going along.

Cross-Q. 24. Where was he going?

A. I don't know whether he was going home or going to Marysville. I met him there as I came out the lane; he was going along the road, and I think he was going down, but I don't know where he was going.

Cross-Q. 25. How came you to talk to him about the boring of the pipes?

A. Well, I commenced talking to him about being down and about overhauling his evidence.

Cross-Q. 26. Had you before that time heard that he had been down to Philadelphia?

A. I heard it shortly before that—that he had been down.

Cross-Q. 27. How had you learned about it? Who told you?

A. I can't remember who told me. It has been the talk of the neighborhood. Everybody has been talking about the Heisleys going down here to testify again.

Cross-Q. 28. Please state the substance of the conversation between you and Mr. Heisley at this time, so far as it had reference to this case.

A. Well, I asked him how he came to make the mistake, or how he knowed he was mistaken, and he told me that he had studied over the matter, and found that when they put the pipe down they got a reamer made, the last time that they put it down—they had put it down once before—to ream the one end out so that they could drive the other end into it; and the blacksmith, Patterson, right above him, made it. So he went to see Patterson, and they hunted the book up, and he found that he had made a mistake. He said that Patterson's book had the date when they got it fixed.

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Cross-Q. 29. You did not at that time tell him that you had made any mistake in your deposition, did you?

A. No, sir.

Cross-Q. 30. Who next after him talked to you about this case?

A. Oliver Miller talked about it afterwards.

Cross-Q. 31. You told Oliver Miller that your recollection in regard to the circumstances about which you had testified was the same as at the time you gave your testimony, did you not?

A. Yes; I did.

Cross-Q. 32. State as near as you can when this conversation with Oliver Miller took place.

A. I can't tell that; it was since the Heisleys was down; he was finding fault—and I, even, was finding fault with them—for changing; I still thought I was right.

Cross-Q. 33. How long after you had met Peter Heisley did this conversation with Miller take place? State as near as you can.

A. Well, I couldn't tell; I didn't keep no account of it afterwards; it may have been a day or two afterwards, and it may have been the next day; I am down at Marysville nearly every day, and I met him when I was going to Marysville.

Cross-Q. 34. Do you know Mr. D. Stevenson?

A. Yes; I know him.

Cross-Q. 35. Do you remember to have recently had a conversation with him with regard to your testimony given in this case?

A. Yes, sir; he was at my house.

Cross-Q. 36. On the occasion of his visit to your house you told him substantially that the testimony previously given by you in this case was correct, did you not?

A. Yes; I thought it was; I told him so.

Cross-Q. 37. Then, up to the time of Stevenson's visit to your house, what Pete Heisley had told you had not changed you in your view as to the correctness of your former testimony; am I correct?

A. Yes; it hadn't changed me; I still had that opinion that I was right.

Cross-Q. 38. Was this interview with Stevenson before or after you had talked with Mr. Miller, as you have testified?

A. I think it was afterwards.

Cross-Q. 39. Some time this month, was it not?

A. Oh, yes; I think it was the beginning of last week, or the week before that, that Stevenson was at my house.

Cross-Q. 40. Do you remember what particular business brought Mr. Stevenson to your house on that occasion?

A. He came to ask me whether I knew when the steam saw-mill was taken away from Miley's woods.

Cross-Q. 41. Who, besides yourself, were at your house when Mr. Stevenson came there, or while he was there?

A. There was nobody there but the women—my daughter and my son's wife.

Cross-Q. 42. Who next talked with you about the matters in regard to which you had testified previously in this case?

A. I don't remember of anybody talking to me about it since that.

Cross-Q. 43. Did not Mr. James W. Brooks come over to see you last week about this case in behalf of the complainants?

A. Yes; Mr. Brooks and Mr. Beers drove in there last week.

Cross-Q. 44. Did they come separately or together?

A. They came together.

Cross-Q. 45. You had known Mr. Beers previously, had you not?

A. Yes, sir.

Cross-Q. 46. Had you ever met Mr. Brooks before?

A. No; I never saw him before.

Cross-Q. 47. Were you introduced to him by Mr. Beers?

A. Yes.

Cross-Q. 48. Did you all go into the house together?

A. No.

Cross-Q. 49. Did you have any conversation with Mr. Brooks or with Mr. Beers, in regard to the facts which you had previously testified in this case?

A. Yes; we talked about it.

Cross-Q. 50. I suppose the object of their visit was to interview you in regard to it, was it not?

A. I think so.

Cross-Q. 51. Who did most of the talking—Mr. Brooks or Mr. Beers?

A. Mr. Brooks.

Cross-Q. 52. Will you please state fully what Mr. Brooks said to you about the testimony which you or any one else had given in this case?

A. I couldn't exactly tell all he said, but he told me that he thought I was mistaken in the time when the ram was put in.

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Cross-Q. 53. What reasons did he give, if any, for believing you to have been mistaken?

A. Why, he had Wagner's book there to show when Wagner put the wall in.

Cross-Q. 54. Did he give any other reason?

A. No; my claim was that he put it in in 1876—I thought so; it was cold, I knowed, when he put it in. Then he showed me Wagner's book that it was put in late in the fall in 1878.

Cross-Q. 55. But aside from what was shown you in the book your independent recollection was that the ram was put in in 1876, as you have testified, was it not?

A. Yes, it was all the time.

Cross-Q. 56. What other argument did Mr. Brooks urge in endeavoring to show that you were mistaken in your testimony about that ram matter?

[Complainants object that the entry in Wagner's book, already proved in this case, is not an argument but a fact.

Respondents reply that the objection itself is but an argument.]

A. He asked me if I thought that Wagner would make a charge there long after he had done the work, or whether I thought that Wagner had charged it at the time he done it.

Cross-Q. 57. Did he tell you that Wagner had testified that the ram was put in in 1878?

A. He did.

Cross-Q. 58. What other arguments besides those you have mentioned did he advance in his endeavor to prove to you that you had made a mistake?

A. I don't know as he said much else about it, except that he thought that Wagner's evidence on it would certainly convince me that I was wrong.

Cross-Q. 59. Did he show you any other books or writings besides Wagner's book?

A. None but the receipt-book that we had here—that I had made a mistake of a year in the rent.

Cross-Q. 60. Did he tell you where he had gotten that book from?

A. Yes; from Howard he said he had got it.

Cross-Q. 61. Did he tell you that he had had any conversation with Howard with regard to the time when Howard lived in your tenant-house?

A. He did.

Cross-Q. 62. What did he say about that?

A. Well, he said that Howard said I was mistaken; that he had lived in it in the year 1877.

Cross-Q. 63. Didn't you before then know that Howard had lived in your house in the year 1877, and that you had made a mere slip of memory in giving your former deposition?

A. I didn't give it a thought afterwards, but since I have been thinking over it it is perfectly plain. I didn't have my book with me before.

Recess until 7.30, P. M.

Cross-Q. 64. Who lived in your tenant-house in 1875?

A. Dave Webb.

Cross-Q. 65. When did he move away?

A. In the fall of 1875.

Cross-Q. 66. Who was the next tenant?

A. The next one was Andrew Lilly.

Cross-Q. 67. When did his tenancy begin and end?

A. The spring of 1876, and ended in the spring of 1877.

Cross-Q. 68. What time in the spring of 1877 did his tenancy end?

A. The first of April, he left.

Cross-Q. 69. He was followed by John Howard, was he not?

A. Yes.

Cross-Q. 70. When did Howard's tenancy begin and end?

A. It began about the first of April—moving time—in the spring of 1877, and ended in the spring of 1878.

Cross-Q. 71. On the occasion of Mr. Brooks' first visit to you, about which you have just testified, did he read you any of the testimony that had been given in this cause?

A. He did read some of it to me.

Cross-Q. 72. Whose testimony did he read?

A. He read some of mine that had been given.

Cross-Q. 73. Did he read some of anyone else's testimony?

A. I don't think he did.

Cross-Q. 74. He had the printed testimony there, didn't he?

A. Yes.

Cross-Q. 75. Did he tell you what George Kissinger had testified to in regard to the ram matter?

A. Well, I don't know whether he just told me his testimony or not. I don't think he had that along.

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Cross-Q. 76. Did he have a book like this? [Indicating a volume of testimony.]

A. No; he had a couple of books, but not with covers on like these.

Cross-Q. 77. Whose testimony did he read from besides your own?

A. I don't think he read any but mine. He particularly wanted to convince me that I had been wrong.

Cross-Q. 78. Did he tell you when Kissinger said the ram was put in?

A. Yea.

Cross-Q. 79. What did he say about that?

A. He said Kissinger said that the railroad books or receipts would show that, and they should go and see it—when he got the pipe.

Cross-Q. 80. Did he show you the railroad books, or a copy of them?

A. No; he didn't.

Cross-Q. 81. What did he tell you the books showed about the pipes?

A. He told me he had went and saw the books and they were just as Kissinger had told him—when the pipes had come—some time late in the fall—that was when they put it in.

Cross-Q. 82. The fall of what year?

A. In 1878.

Cross-Q. 83. Did he tell you anything else that Kissinger had told him about the putting in of the ram, or the getting of pipes for it?

A. He told me that Kissinger said that they had the receipts—I don't know whether he said Kissinger had them, or that some one had them—the receipts where the pipe was ordered, in Philadelphia.

Cross-Q. 84. Did he show you from the book a copy of the receipt?

A. Well, I don't exactly know whether he showed me a copy of it or not.

Cross-Q. 85. When did he tell you Kissinger had said the logs were bored for his ram?

[*Objected to as assuming that Mr. Brooks told him that Mr. Kissinger said he bored the logs, which does not appear from the testimony to be the case.*]

A. I don't know whether he told me anything about it.

Cross-Q. 86. Was nothing about the boring of the pipes spoken of in your interview with Mr. Brooks at that time?

A. Yes, he talked about them; he said I knew that it wouldn't do to bore them a year or two before using them.

Cross-Q. 87. That was one of the arguments that he used to convince

you that you were mistaken in that part of your testimony wherein you stated that the logs were bored by Kissinger in the spring of 1875? I refer to the point that he made that it wouldn't do to wait so long to put in the pipes after boring them.

A. Yes; that was what he said; green logs would crack, you know; they wouldn't do at all; you would have to put them in, or they would crack, and wouldn't hold water.

Cross-Q. 88. That is another point that he made about the matter, isn't it?

A. Yes, sir.

Cross-Q. 89. It was his suggestion, also, that you had been to see Kissinger's pipes after your pipes had been clogged up by the roots, was it not?

A. Yes.

Cross-Q. 90. How long did Mr. Brooks remain at your house at this first interview?

A. Well, we were not in the house; I didn't take notice of the time he remained at my place—a half hour, I suppose; we talked a little while.

Cross-Q. 91. Please tell us where you were when this talk took place.

A. We were in the wagon-shed.

Cross-Q. 92. Were you sitting down at the time?

A. No.

Cross-Q. 93. Was he sitting down?

A. No.

Cross-Q. 94. At this interview did he tell you anything about what the Heisleys had testified to when they were recalled?

A. Yes; he told me that they had changed some of their evidence; that they found they were mistaken.

Cross-Q. 95. Did he tell you what they had testified to at first?

A. No.

Cross-Q. 96. He only told you, then, what they had testified to when they were recalled; is that not so?

A. I don't know whether he just told me that, either. He told me that they had found that they were wrong, and had corrected what they had testified to before.

Cross-Q. 97. Did he tell you when the Heisleys had testified that they bored their pipes the first time?

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A. I think he said they said they bored them in 1874 the first time.

Cross-Q. 98. Did he tell you about what the Heisleys had testified in regard to the re-boring of the pipes and the making of the bit by Patterson?

A. He told me had re-bored them in 1876, and got the bit made to ream them out to fix them right.

Cross-Q. 99. Did he show you Patterson's book, or an extract from it?

A. No; but he told me that he went up and saw it, and Patterson looked the book over, and found the date—in 1876—when he made the bit.

Cross-Q. 100. He asked you at this interview if you didn't remember seeing Wagner standing in the trench when you went over there to Kissinger's, did he not?

A. Yes.

Cross-Q. 101. Did Beers go away before Brooks, or did they go away together, from your place?

A. They went away together.

Cross-Q. 102. He told you more about the details and circumstances connected with the putting in of Kissinger's ram than you had ever known before, didn't he?

A. He gave me the dates which I hadn't. I had only dates of my own before, and it was only guess-work to say when Kissinger's was put in.

Cross-Q. 103. But so far as your own recollection went, and independently of all these matters he told you, you thought, as you testified, that Kissinger's ram was put in in 1876, did you not?

A. Yes, I did.

Cross-Q. 104. When Mr. Brooks was at your place at the time you have mentioned, did he read to you or did he tell you about any of the testimony that had been given in this case by persons other than yourself, who had sworn that they had seen bored logs at Kissinger's place and Kissinger boring logs in the year 1875?

A. Yes, he did.

Cross-Q. 105. What did he tell you about that?

A. He said Champion and Fesler had sworn to that effect, he had heard.

Cross-Q. 106. Anybody else?

A. No, I think he didn't mention anybody else.

Cross-Q. 107. Did he tell you that he thought these gentlemen were mistaken in their testimony?

A. Yes; he told me he thought they were.

Cross-Q. 108. Did he tell you of any other person who had testified that they had seen the trenches dug at Kissinger's place in 1876?

A. I don't recollect that he did.

Cross-Q. 109. Did Mr. Brooks tell you that witnesses who had testified for the defendants in this case had sworn that they had seen the ram on Mr. Kissinger's place, and in active operation there, in the years 1876 and 1877?

A. I don't think he did. I don't recollect of his saying anything about it.

Cross-Q. 110. Please state as accurately as you can when it was that Mr. Brooks and Mr. Beers came to see you, as you have testified.

A. Well, I have no date for that, but I think it was about the first of last week—the forepart of the week, at any rate.

Cross-Q. 111. Was this visit of Mr. Brooks before, or after Mr. Stevenson was there?

A. I think Stevenson's was first; I ain't certain, but I think it was.

Cross-Q. 112. Please state what conversation passed between you and Mr. Brooks when he left your place, or was about leaving.

A. Indeed, I didn't put it down. I couldn't tell exactly. I think he said he would see me again when he left. I think that was about the last he said about it.

Cross-Q. 113. Did he come to see you again; if so when?

A. I met him on the road. I was going out and I suppose he was coming in. Beers, I think, was with him.

Cross-Q. 114. When was this?

A. This was on last Thursday, I think.

Cross-Q. 115. What did he say he came to see you about this second time?

A. He wanted to know whether I had studied over it, and what about it.

Cross-Q. 116. Studied over what?

A. Over this affair about my making a mistake.

Cross-Q. 117. Well, what did you tell him about it?

A. I told him I had studied it up, and as near as I could come at it I thought I was mistaken about the dates—about the putting in of the ram.

Cross-Q. 118. When he went away after the first visits did he leave you any papers to look over?

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A. No, he didn't.

Cross-Q. 119. Between the time of his first visit and that of his second visit did you read any of the testimony that had been given in this case, or did you talk with anybody about this case?

A. I read my own testimony—looked it over. I had that. It had been sent to me sometime before. I saw Henry Gamber and asked him about it. He had been of the same opinion I was—in 1876. Then he told me that he looked over his books—he had done some butchering for Kissinger that summer—and he said the books made it 1877; so he was mistaken, he said, in the 1876 arrangement. Then I talked to Dr. Traver, after I talked to Gamber about it, too; and he said he was assessor in 1876, and he thought the ram was in then, but he didn't go to look at it. He said Kissinger told him it wasn't working—it was out of order.

Cross-Q. 120. Henry Gamber, a witness called for the defendants, and whose testimony is printed in defendants' sur-rebutting record pages 739 to 750, testified, page 742, that he butchered a calf for Mr. Kissinger September 26, 1877, and that he saw the ram there, at Kissinger's, in 1877, at the time he butchered that calf. He further testified, page 744, that he sold out his butchering business to Mr. Joseph Gensinger, in July, 1878, and never went into that business again; is this the Henry Gamber that you have referred to?

[*Objected to as an incorrect statement of Gamber's testimony on the matter referred to in the question, inasmuch as Gamber, on the first day of his deposition, swore, as printed on page 741, that he butchered the calf on September 26, 1876, and two days afterwards came back and swore that he had discovered by his book that it was September 26, 1877.*]

A. Yes, sir.

Adjourned until May 14, 1884, at 10, A. M.

MAY 14, 1884, 10, A. M.

Examination resumed.

Present, same counsel.

Cross-examination of David Cowens, by Mr. Church, continued:

Cross-Q. 121. You have stated that when Mr. Brooks visited you last Thursday he asked you if you had studied over the matter about Kissinger's ram. What else did he say on that occasion?

A. I don't know what all he said; I didn't take any account of it.

Cross-Q. 122. Did he again talk with you about Wagner?

A. I don't know. I think maybe he did mention Wagner. I told him that I had studied the thing over, and after the facts of Wagner's book and what he had testified to—I had give it quite a study the night before, and I had come to the conclusion that possibly I might be wrong.

Cross-Q. 123. How long did Mr. Brooks stay on that second visit?

A. That I couldn't tell you; half an hour, maybe, we sat and talked there.

Cross-Q. 124. Did he come into the house that time?

A. No, sir; I met him at the end of the lane as I was going out. He was in a buggy, and when he met me he stopped and got out, and the buggy went on.

Cross-Q. 125. This Mr. Brooks is a genial, good-natured sort of fellow, ain't he?

A. Yes, sir; he is quite a pleasant man to talk to.

Cross-Q. 126. He has very good manners, has he not, sir?

A. Yes, sir.

Cross-Q. 127. Did he tell you where he came from?

A. Yes, sir; he told me his business was in Boston.

Cross-Q. 128. Did he tell you what his business was, sir?

A. No; he didn't tell me that.

Cross-Q. 129. He didn't tell you he was a large stockholder in the Bell Telephone Company, did he?

A. No, sir; he didn't say nothing about it.

Cross-Q. 130. How old should you judge him to be, sir?

A. Well, I should suppose he was about fifty, by the looks of him.

Cross-Q. 131. He has a round, smoothly-shaven face, hasn't he?

A. Well, I don't know how round, but it is shaved off smooth, at any rate.

Cross-Q. 132. And he has curly hair, somewhat gray, hasn't he?

A. Somewhat—I take notice it is turned somewhat.

Cross-Q. 133. Did you remark that it was curly?

A. I didn't, but I think it is curled a little at the ends; it seems to look a little that way.

Cross-Q. 134. He dresses rather well, doesn't he?

A. Oh, well, he dresses ordinary; he is not extra, either.

Cross-Q. 135. On the whole, he is a rather good-looking and gentlemanly-appearing man, is he not?

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A. Yes, sir; he has a gentlemanly appearance.

Cross-Q. 136. Mr. Brooks is a very good talker, isn't he?

A. He is a reasonably good talker.

Cross-Q. 137. After you had sat there and talked the matter over with Mr. Brooks on the occasion of this second visit, he asked you to go down to Philadelphia, didn't he?

A. Yes; he asked me to go along down.

Cross-Q. 138. Well, what did you do then?

A. Well, he said I should go along down, and if I couldn't satisfy myself that I was wrong, I should just say what I thought—what I was satisfied was right, and he would be satisfied. He didn't want me to say any more than I honestly thought was so.

Cross-Q. 139. Then, as I understand you, you agreed to go to Philadelphia with the understanding that if, when you got there, you didn't feel satisfied that you might have been mistaken, you need not go on the stand again; am I right?

A. Yes; that is right.

Cross-Q. 140. Did you go off in company with Mr. Brooks?

A. I met Mr. Brooks in Harrisburg the next day.

Cross-Q. 141. That was last Friday, wasn't it?

A. Yes.

Cross-Q. 142. Did you go down to Philadelphia with him Friday?

A. Yes.

Cross-Q. 143. Did you see anybody else in Harrisburg, connected with this case in any way, besides Mr. Brooks?

A. I did not.

Cross-Q. 144. Did anybody come down in the train with you besides Mr. Brooks, who was connected with this case in any way?

A. Mr. Theo. Fenn came along down in the train; I met him there at the depot; I didn't know he was connected with it, though; he told me he lived here, and was on his way home.

Cross-Q. 145. A Mr. Theo. Fenn testified in this case for the defendants (see defendants' sur-rebutting record, pages 775 to 788) that he saw the ram at Kissinger's in the fall of the year, either in 1876 or 1877 (page 780). Is that the gentleman to whom you have referred?

[Objected to on the ground that the question does not correctly state Mr. Fenn's testimony, inasmuch as his testimony as to the date when he saw the ram was merely "to the best of my knowledge and belief," and that knowl-

edge and belief was admitted by him to be merely the result of inferences and argument, and not of recollection. See especially answers 30 and 43-44 in his direct examination.]

A. I guess it is the same man.

Cross-Q. 146. Did you and Mr. Brooks ride in the same seat, or in different seats, in coming down on the train?

A. In different seats.

Cross-Q. 147. Who, if any one, sat with you coming down?

A. Nobody sat with me.

Cross-Q. 148. Did you have any conversation with Mr. Fenn on your way down?

A. Yes, sir; he came and sat in the seat behind me, and Mr. Brooks sat in the seat in front of me.

Cross-Q. 149. Didn't you tell Mr. Fenn, in effect, that Mr. Brooks wanted you to come down to Philadelphia, but that you didn't think it was worth while, as you had already given your testimony in this case?

A. I think I maybe talked something to that effect. I told him that he wanted me to come down, that he thought I had made a mistake. I told him that after hearing of the dates, that probably I was wrong in some of them.

Cross-Q. 150. What time did you arrive in Philadelphia?

A. I think it was half-past three.

Cross-Q. 151. Did any one meet you and Mr. Brooks at the train?

A. I think not.

Cross-Q. 152. Where did you go upon your arrival at the depot?

A. We came to this place—this house.

Cross-Q. 153. Whom did you find here that you knew?

A. I think I met the two Epplers here—Simon and Herman—and Mr. Dick, I guess, too; he was here.

Cross-Q. 154. Any one else?

A. Not on Friday I don't think—I believe, too, I met one of the Drawbaughs; I met him up here on the street, and that man that attended up there at Harrisburg—Shank.

Cross-Q. 155. Mr. Chauncey Smith was with you, was he not, when you met Mr. Drawbaugh and Mr. Shank?

A. I think he stopped and talked; I wasn't with him when I met them, but I stopped and talked to them, and I think he came along, and he stopped and talked.

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Cross-Q. 156. That was Saturday afternoon, wasn't it, when you met Mr. Shank and Mr. Drawbaugh? I mean the day after you arrived here.

A. I think it was; Shank told me he was going home that afternoon.

Cross-Q. 157. The first day you arrived here—that is, Friday—with whom did you talk about this ram business?

A. I don't recollect who all I talked to about it.

Cross-Q. 158. Did you talk to Mr. Smith about it?

A. I might have; I don't recollect exactly what we talked of; we might have had a word or two about it.

Cross-Q. 159. Did you talk to Mr. Storrow about it?

A. I merely talked to him; I don't think I talked to him much about it; I met him down here and had a word or two, but what the conversation was about I couldn't tell.

Cross-Q. 160. Did you have anything to say with Mr. Howson about the ram matter?

A. I don't know Mr. Howson; I don't think I had anything to say to him.

Cross-Q. 161. How did you spend the remainder of the afternoon of Friday?

A. I don't know just exactly; we walked around a little; I don't know where all I was exactly; we hadn't very much of it to spend after we got here; it was pretty near night.

Cross-Q. 162. You say "we" walked around a little—who went with you?

A. I don't know exactly, maybe some of the Eppler boys—I met them here—and Dick.

Cross-Q. 163. I understand Mr. George W. Kissinger is here. Have you met him, and if so, when did you first meet him?

A. I met him on Friday evening when the train came in. He came on the Friday evening train I think—about seven o'clock or somewhere about that time.

Cross-Q. 164. Who came with him?

A. Well, there was a man along with him—a red bearded man—probably that was Mr. Howson. I am not acquainted with him, but that may be the man that was along with him.

Cross-Q. 165. Did you go out anywhere on Friday night?

A. I think not. Me and Kissinger had a quite a talk about old

times when we were neighbors together up there. I hadn't seen him for a good while.

Cross-Q. 166. I suppose it was the ram business that brought him down here, wasn't it?

A. I don't know. I suppose so.

Cross-Q. 167. And in your conversation with him you talked about the ram, didn't you?

A. Not much that evening—Saturday morning we talked some.

Cross-Q. 168. During your talk Saturday morning who else was present with you?

A. I don't know. I think when me and Kissinger talked about the ram we were by ourselves.

Cross-Q. 169. Kissinger told you he thought you had made a mistake, didn't he—in your former testimony?

A. Yes.

Cross-Q. 170. Kissinger hadn't come on here to give any further testimony, had he, that you know of?

A. Not that I know of. I don't know what he came on for.

Cross-Q. 171. On Saturday did you have any conversation about the ram with any of the counsel for the complainants in this cause—I mean Mr. Storrow, Mr. Smith, or Mr. Howson?

A. I think Mr. Storrow talked something to me about it. I don't know whether any of the rest did or not.

[At request of complainants' counsel, Examiner notes that Mr. Cowens was put on the stand and sworn the first thing on Monday morning, May 12, 1884, and his examination postponed at request of defendants' counsel.]

Cross-Q. 172. Mr. Storrow also said he thought you were mistaken, did he not, about your testimony?

A. I don't exactly know. I think maybe he did say something about it.

Cross-Q. 173. What arguments did he use in his endeavor to show that you had made a mistake?

A. I don't exactly know what Mr. Storrow said about it. Mr. Brooks produced Wagner's book to show the date when it was put in.

Cross-Q. 174. Was Mr. Brooks present when Mr. Storrow was talking to you about the ram?

A. Well, that I don't exactly know. I think Mr. Brooks was in the room himself with me at first.

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Cross-Q. 175. Have you seen Mr. John Comfort since you have been down here?

A. I saw him several times.

Cross-Q. 176. Has he talked to you about the ram business?

A. I don't think he did—very little at any rate. Because he talked very little to me—only bid me the time. He knows me when he sees me.

Cross-Q. 177. Am I to understand from your 173d and 174th answers that Mr. Brooks was in the room with you, talking about the ram and Wagner's book, and all that, before Mr. Storrow came in to talk with you about those matters?

A. Well, I think that Mr. Brooks showed me the book before Mr. Storrow talked to me; I think so. I might be mistaken, too.

Cross-Q. 178. How did you spend Saturday, besides having these interviews about the ram?

A. I walked around the streets a little. I don't know who all I walked with or what I done. I would have to have a good head to tell all I done, or who I walked out with, and where all I went. However, when I got tired sitting I walked out.

Cross-Q. 179. Mr. Kissinger was with you a good part of the time, was he not, on Saturday?

A. I think he was, a good part of the time. Me and him walked around a little together.

Cross-Q. 180. Where did you go Sunday?

A. I have got a daughter living in Philadelphia, and I went to see her Sunday, and spent the Sunday there.

Cross-Q. 181. Have you read any testimony, since you have been down here, taken in this cause?

A. I think not.

Cross-Q. 182. As I understand you, between the present time and the time when Mr. Brooks first came to see you, you have had more or less conversations with Mr. Brooks, Mr. Smith, Mr. Storrow, and Mr. Kissinger about this ram matter, and they all have told you that they thought you had made a mistake in your former testimony about the time when Mr. Kissinger's pipes were bored and his ram was put in; is that not so?

A. I had considerable conversation with Mr. Brooks about it that caused me to study and hunt up to see what I done—to see whether I was wrong. So that before I left home I thought that I had made a mis-

take. Mr. Storrow didn't say much about it. I told him when I came down; and what I did say was that I was a little wrong on my dates.

Cross-Q. 183. Didn't Kissinger tell you that the railroad books showed that the pipes for his ram were received in 1878, and that there was no getting around that?

A. Kissinger talked about that; but Mr. Brooks told me, before I saw Kissinger, that he had saw the receipts—that the pipes was got in 1878. And Mr. Brooks said that Wagner's testimony ranged with the railroad books. And I saw Mr. Wagner walling up the pit where the ram was put in, myself, but I have no date. But when I heard that his testimony was—in 1878, in the fall—that I certainly was wrong about mine, because they couldn't put the pipe in before they got it.

Cross-Q. 184. Did Mr. Kissinger tell you that he had also obtained other pieces of pipe, from Harrisburg and from Drawbaugh's shop?

A. He didn't tell me that. I heard him telling somebody that he had got a piece from Drawbaugh—or two.

Cross-Q. 185. Did you hear him say anything about pipe that he had obtained from Harrisburg?

A. I didn't.

Cross-Q. 186. How came you to put in pipes made out of boards at your place?

A. There was a preacher stopped at my place, and I was talking of putting in lead-pipes, and he told me that he put in board-pipe from his spring to convey the water. He said hemlock boards would last a long time, and were cheap; they didn't cost much. That is what put me to putting board-pipe in.

Cross-Q. 186½. Who assisted you in opening up your pipes after they had become clogged by the roots, as you have testified?

A. Well, I couldn't tell, hardly. I did it myself mostly. I was assisted by some of the boys partly, but I was the main—I undertook it myself.

Cross-Q. 187. What crop was in that field when you opened the pipes?

A. I think it was in grass. It had corn in when we laid them; then we had oats the next spring; and then wheat in the fall, after the oats was out; then, I think, after harvest following, when the wheat was cut, I think, we opened the pipes.

Cross-Q. 188. Was it not early in the spring when you were over at Kissinger's and saw him boring the pipes?

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A. I think it was, early in the spring.

Recess until 2.15 P. M.

Cross-Q. 189. Mr. Cyrus Kissinger, a witness examined on behalf of complainants in this cause, has testified (complainants' record, pages 1478-1479,) that all of the log pipes for his father's ram were put in in the fall of 1877, before Christmas. You have testified that you saw Kissinger boring pipes early in the spring. Now, the spring that you referred to could not have been later than the spring of 1877, could it?

[Objected to as an incorrect statement of Cyrus Kissinger's testimony as to the time when the logs were bored and put in, and the question objected to, also, as purely argumentative.]

A. I don't know whether it was the spring of 1877 or 1878. I didn't have no date to it.

Cross-Q. 190. You have stated that the time of the year when you cleaned out your pipes and took out the roots was after harvest. How long after harvest was it that that clearing out was done?

A. That I couldn't tell. I said it was soon after harvest. I think it was soon after harvest.

Cross-Q. 191. As, then, according to your testimony, it was soon after harvest that you cleaned out your pipes and took out the roots, and as it was in the spring of the year that you saw Mr. Kissinger boring his pipes, is it not evident, then, that, relying on your independent recollection, these two events must have occurred on wholly different occasions?

A. They might have occurred on different occasions.

Cross-Q. 192. What time of year do they cut wheat in Perry county?

A. About July first, or about there. It is generally done about the fourth.

Cross-Q. 193. Do you not recollect that last fall Mr. W. K. Fenn was talking to you at your barn while you were fixing up your threshing-machine, and that in telling him of your recollections about the putting in of your pipes, and the boring of Kissinger's pipes you mentioned to him that you had to open your pipes to clean the roots out of them a couple of years after you first put them in, and that you did that work in the after part of the summer, and that the time you were at Kissinger's and saw him boring his pipes was in the spring, and from that fact you were

very positive that it was not when you cleaned out your pipes that you were at Kissinger's, but when you first put your pipes in?

A. That was my opinion—when I first put the pipes in that I went—but I was mistaken about that.

Cross-Q. 194. The question asked you if you didn't state what I repeated, to Mr. Fenn last fall, and I ask the Examiner to read the question again to you.

A. I don't know, indeed, whether I did or not. Me and Mr. Fenn has talked pretty often over them things, and I couldn't tell you what all I have told him. We have talked pretty often about it, and he has asked me questions.

[Complainants' counsel call attention of the Court to question 36 and the answer thereto, in Mr. Cowen's deposition, (defendants' sur-rebuttal, page 701.)

Defendants' counsel replies that the question and answer referred to relates specifically to the "putting in" of wooden pipe after the spring of 1875, and not to the cleaning out or repairing of the same.

Complainants' counsel rejoins that when he first read that question and answer, it seemed to him, and seems to him now, that the counsel who put it meant to cause the court to believe that the matter of Mr. Cowen's pipes never furnished but one occasion for considering what kind of pipe should be placed there, and that the witness, when he made the answer, so believed.

Counsel for defendants protest against the construction placed upon the question and answer by counsel for complainants as being without any warrant or foundation anywhere except in the imagination of complainants' counsel, and as being an entire perversion of the record.]

Cross-Q. 195. Did you not tell Mr. Fenn that you had cleaned those pipe after you had put them in?

A. I don't recollect whether I did. I do clean them every year—about—now. At first I think they ran about two years before they wanted cleaning.

Re-direct by Mr. Storrow:

Q. Q. 196. Would the roots grow into log pipes so as to give any trouble?

[Objected to as not proper re-direct examination, and as calling for mere opinion.]

A. I think not, if they were properly put together.

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Q. Q. 197. When you saw Jesse Wagner stoning up the ram-pit, did you just happen to be there by accident, or did you go there for any purpose?

[*Objected to as not proper re-examination.*]

A. I think I went there on purpose to see him—to see the ram.

Q. Q. 198. What led you to go there to see the ram at that time?

[*Same objection.*]

A. I was anxious to see it—to see what it looked like.

Q. Q. 199. When the matter of your seeing Mr. Wagner there was mentioned between you and Mr. Brooks, did you first tell him that you saw Mr. Wagner stoning up the pit, or did he first ask you whether you saw Mr. Wagner there?

[*Objected to, as the witness has already stated in cross-examination that Mr. Brooks suggested it to him.*]

Complainants reply that the witness stated nothing of the kind. He stated in his 100th cross-answer that Mr. Brooks asked him if he saw Mr. Wagner in the trench. The object of the present inquiry is to ascertain whether the witness had before that told Mr. Brooks that he saw Mr. Wagner there at work on the pit.

Counsel for defendants simply replies by quoting cross-questions and answers 53, 54, and 57, as follows:

“Cross-Q. 53. What reason did he give, if any, for believing you to have been mistaken?

A. Why, he had Wagner's book there to show when Wagner put the wall in.

Cross-Q. 54. Did he give any other reason?

A. No; my claim was that he put it in in 1876; I thought so; it was cold, I know, when he put it in; then he showed me Wagner's book that it was put in late in the fall of 1878.

Cross-Q. 57. Did he tell you that Wagner had testified that the ram was put in in 1878?

A. He did.”]

A. I think he told me that Mr. Wagner had testified to that; that he had stoned it up at that time; then I told him that I saw Mr. Wagner at the work, but I didn't know the date.

Q. Q. 200. Before you testified at Harrisburg last winter, had the defendants, or Squire Fenn, or the parties who saw you about it, told you what Mr. Wagner had testified about stoning up the pit?

[*Objected to as not proper re-direct, also as leading.*]

A. They did not.

Q. Q. 201. On your cross-examination you have been asked a great many questions in order to show that Mr. Brooks did not tell you that witnesses for the Drawbaugh Company had testified that they saw pipes and ditches and a ram at Mr. Kissinger's in 1875 and 1876. Before Mr. Brooks came to see you, did you know that a number of Mr. Drawbaugh's witnesses had so testified?

A. I don't recollect that I did. I heard a great deal, but paid very little attention to it. There was so much talk about it.

Q. Q. 202. You were at Harrisburg several days before you testified last winter, were you not?

A. I was five or six days there before I testified; I think, on the sixth day I testified.

Q. Q. 203. While there did you talk some about the ram with other witnesses who were waiting to testify?

A. I did. There was great talk there about it.

Q. Q. 204. I suppose you knew that your son John testified?

A. He testified after me.

Q. Q. 205. Do you know that your son John testified that he saw pipes and ditches, and, he thought, a ram there, in 1876?

[*Objected to as irrelevant and incompetent, and improper re-direct examination.*]

A. I don't know whether he said he saw pipes there. He saw a ditch—saw them digging a ditch there, he thought, for the ram. Something to that amount he told me.

Q. Q. 206. Is Mr. David Stevenson who came to see you a machinist in Harrisburg?

A. Yes; he told me he was.

Q. Q. 207. Did he tell you whether he was employed by Drawbaugh or the Drawbaugh party?

A. He said he used to work for Drawbaugh.

Q. Q. 208. Did he tell you whether he had been intimate with Drawbaugh for a good many years?

A. Yes; he told me that he was well acquainted with him.

Q. Q. 209. Did he tell you whether he and Drawbaugh had had dealings with each other, or had helped each other?

A. He told me he often helped Drawbaugh when he was in want of somebody.

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Re-cross by Mr. Church :

Re-cross Q. 210. Did He tell you that he helped Drawbaugh at his machine-shop, working for him as a machinist?

A. He did; yes.

[The whole of the above deposition objected to as incompetent, insofar as any attempt is made in it to change the testimony formerly given by the witness for the defendants in regard to the time of the boring of the logs or the putting in of the ram at Mr. Kissinger's place, such attempted changes not being founded upon any personal recollection of the witness, but merely upon hearsay evidence forced upon him by complainants and their agents.

[Complainants' counsel reply that the objection misstates the facts and the testimony of this witness.]

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
14th day of May, 1884.

FRED. M. OTT,
Examiner.

DAVID COWENS.

[Complainants offer in evidence four certified copies from the Patent Office, as follows:]

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" DEPARTMENT OF THE INTERIOR.
United States Patent Office.

To all Persons to whom these Presents shall come,
GREETING:

This is to Certify That the annexed is a true copy from the Files of this Office of The Power of Attorney filed August 9, 1882, in the matter of The Letters Patent granted,

Daniel Drawbaugh,
October 31, 1882, Number 266,615,
for

Improvement in Telephone Transmitters.

In testimony whereof I, Benj. Butterworth, Commissioner of Patents, have caused the Seal of the Patent Office to be affixed this 29th day of December, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the one hundred and eighth.

Seal of
Patent Office
United States
of America.

Benj. Butterworth,
Commissioner.

To the Commissioner of Patents:

Your petitioner Daniel Drawbaugh a citizen of the United States residing at Eberly's Mills, Cumberland Co., Pennsylvania, prays that Letters Patent may be granted to "The Peoples Telephone Company" of the State of New York as his assignee for the Improvement in Telephones (Case B) set forth in the annexed specifications; and he hereby appoints Park Benjamin and George H. Benjamin, constituting the firm of Park Benjamin & Bro., of the city of New York, State of New York, attorneys with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

Ex'd E. A. M.

Daniel Drawbaugh.

S. P. P.

Rec'd and filed Aug. 9, 1882. 27,450, D. '83.

(2-175.)

DEPARTMENT OF THE INTERIOR.

United States Patent Office.

To all Persons to whom these Presents shall come,
GREETING:

This is to certify that the annexed is a true copy from the files of this office of the power of attorney filed December 5, 1882, in the matter of the Letters Patent granted

Daniel Drawbaugh,
February 27, 1883, Number 272,865,
for

Improvement in Telephone Transmitter.

In Testimony whereof I, Benj. Butterworth, Commissioner of Patents, have caused the Seal of the Patent Office to be affixed this 29th day of December, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the one hundred and eighth.

Seal of
Patent Office
United States
of America.

Benj. Butterworth,
Commissioner.

To the Commissioner of Patents:

Your petitioner, Daniel Drawbaugh, a citizen of the United States residing at Eberly's Mills, Cumberland county, Pennsylvania, pray that Letters Patent may be granted to him for the improvement in Telephone Transmitters set forth in the annexed specification; and he hereby appoints Park Benjamin and George H. Benjamin, constituting the firm of Park Benjamin & Bro., of the city of New York, State of New York, attorneys with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the patent office connected therewith.

Ex'd E. A. M.

Daniel Drawbaugh.

S. P. P.

Rec'd and filed Dec. 5, 1882. 27,450, D. '83.

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DEPARTMENT OF THE INTERIOR.

United States Patent Office.

To all Persons to whom these Presents shall come.

GREETING:

This is to Certify, That the annexed is a true copy from the Files of this Office of The Power of Attorney filed December 5, 1882, in the matter of The Letters Patent granted

Daniel Drawbaugh,

February 27, 1883, Number 272,866,

for

Improvement in Speaking Trumpets for Receiving Telephones.

In testimony whereof, I, Benj. Butterworth, Commissioner of Patents, have caused the Seal of the Patent Office to be affixed this 29th day of December, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the one hundred and eighth.

Seal of
Patent Office
United States
of America.

Benj. Butterworth,

Commissioner.

To the Commissioner of Patents:

Your petitioner, Daniel Drawbaugh, a citizen of the United States, residing at Eberly's Mills, Cumberland Co., Pennsylvania, prays that Letters Patent may be granted to him for the Improvement in Speaking Trumpets in Receiving Telephones, set forth in the annexed specification, and he hereby appoints Park Benjamin and George H. Benjamin, constituting the firm of Park Benjamin & Bro., of the City of New York, State of New York, attorneys, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

Ex'd E. A. M.

Daniel Drawbaugh.

S. P. P.

Rec'd and filed Dec. 5, 1882. 27,450, D. '83.

DEPARTMENT OF THE INTERIOR.

United States Patent Office.

To all persons to whom these presents shall come.

GREETING:

This is to certify that the annexed is a true copy from the files of this office of the power of attorney filed January 17, 1883, in the matter of the Letters Patent granted

Daniel Drawbaugh,

April 17, 1883, Number 276,136,

for

Improvement in Electric Signaling Apparatus for Telephone Lines.

In testimony whereof I, Benj. Butterworth, Commissioner of Patents, have caused the Seal of the Patent Office to be affixed this 29th day of December, in the year of our Lord one thousand eight hundred and eighty-three, and of the independence of the United States the one hundred and eighth.

Seal of
Patent Office
United States
of America.

Benj. Butterworth,

Commissioner.

To the Commissioner of Patents:

Your petitioner, Daniel Drawbaugh, a citizen of the United States, residing at Eberly's Mills, Cumberland County, Pennsylvania, prays that Letters Patent may be granted to him the Improvement in Electric Signalling Apparatus for Telephone Lines set forth in the annexed specification; and he hereby appoints Park Benjamin and George H. Benjamin, constituting the firm of Park Benjamin & Bro., of the city of New York, State of New York, attorneys with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent and to transact all business in the Patent Office connected therewith.

Ex'd E. A. M.

Daniel Drawbaugh.

S. P. P.

Read and filed January 17, 1883. 27,450, D. 1883.

Objected to as immaterial, irrelevant, and incompetent for any purpose, and especially in rejoinder.]

HERMAN J. EPPLER, *being produced, sworn, and examined, saith:*

Examined by Mr. Storrow:

My age is fifty-four; I reside at Baltimore, Maryland; I had been in the boot and shoe business for the last six or eight years; I went out of business a short time ago, and am not doing anything now.

Q. 1. Did you at one time live at Marysville, a few miles above Harrisburg?

A. Yes, sir.

Q. 2. About when did you move there, and about when did you leave there?

A. I moved there in 1862, and left there in 1882.

Q. 3. What part of 1882?

A. March 24th.

Q. 4. While you lived there did you know Thomas Draper who owned a farm and some tenant-houses there, and who now resides in Delaware?

A. Yes, sir; I did.

Q. 5. Were you at one time agent for him to look after his property at Marysville?

A. Yes, sir.

Q. 6. Please look at the paper, consisting of a double sheet, now shown you, and state in whose handwriting the body of it is, and in whose handwriting the two signatures "Thomas Draper" are.

[Question objected to because no proper foundation has been laid.]

A. They are in Mr. Draper's handwriting. The signature of John Draper I never saw—only what is here now, nor even didn't see him write that.

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[The paper is put in evidence; the first page, marked "Draper-Eppler letter March 8, 1877," is as follows:

"Magnolia, March 8, 1877.

Mr. Herman J. Eppler

Dear Sir

inclosed you will find authority to take charge of my business at Marysville try and rent the other house if you can. I saw the old man Lilley after I saw you he talked about renting or buying it. I would like to sell both of those houses.

Rev. Mr. Shortlage talked of buying one and I think he will if times improve a little this spring.

Tell Mr. Kissinger I have bought the hedge-plants and will send them up in a weak or two and I will also send some Phos^{phate} to go on them and for his corn in the lower field.

I want him to give it a good dressing of lime before he plants the corn Ever Truly Thomas Draper.

The second page of it marked "Draper-Eppler Power of Attorney, March 8, 1877," is as follows:

Know all men by these presents that I Thomas Draper of Kent County and State of Delaware do apoint and constitute Herman J. Eppler of Marysville, Perry County and State of Pennsylvania my lawfull agent to take charge of my business in the said Borough of Marysville to rent my property there and to collect the rents and attend to my business generly as I may by letter direct.

In witness whereof I have 8th day of March A. D. 1877 set my hand and seal.

Witness

Thomas Draper [LS]

John Draper.

The whole paper objected to as not properly proven.]

Q. 7. Did you receive this paper by mail at or about the time of its date?

[Objected to as leading.]

A. Yes, sir.

Q. 8. Did you act under it and take care of property of Mr. Draper under it?

[Same objection.]

A. Yes, sir.

Q. 9. Up to what time did you continue to act as agent for Mr. Draper under it?

A. From the spring of 1877 to about the latter part of January, 1882.

Q. 10. I judge from the letter and paper, that before he wrote them

it had been agreed between you that you should be appointed as his agent and act as such; is that the fact or not?

[Objected to as argumentative and leading.]

A. Yes, sir; that was the verbal agreement made between us.

Q. 11. Where was that verbal agreement made, and about how long before the date of these papers?

A. It was made at Marysville, at my shoe-shop, about a month or six weeks, or along there, before.

Q. 12. There was at one time a ram upon the Draper farm, occupied by Mr. George W. Kissinger, at Marysville, to throw water from the spring up to the house; did you ever see that ram there?

[This and all questions bearing upon the time when the Kissingers put in their ram objected to as improper and incompetent evidence in rebuttal or rejoinder, the subject having been gone into at great length of testimony, including the Kissingers, J. O. Zimmerman, and others, in the testimony taken by complainants in reply.]

A. I saw it there in 1878.

Q. 13. Was there any ram there when you were appointed agent, in March, 1877, or not?

[Same objection.]

A. No, sir.

Q. 14. Was the ram put in for the first time while you were agent, or not?

[Same objection, and also because leading.]

A. It was put in while I was agent—the second year that I was acting for Mr. Draper.

Q. 15. Please look at the letter now shown you, dated December 18, 1877, and state in whose handwriting is the body of the letter and the signature.

[Same objection as to question 6.]

A. It is Thomas Draper's handwriting and his signature.

Q. 16. Please look at the articles of agreement now shown you, dated December 4, 1877, and state in whose handwriting is the body of it, and also in whose handwriting is the signature "Thomas Draper."

[Same objection.]

A. Mr. Draper's handwriting and his signature.

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Q. 17. The paper also bears what purports to be the signature of George W. Kissinger as a party and G. W. Eppler as a witness. Are those the signatures of those two gentlemen? Did you see them, or either of them, sign the paper?

A. Yes, sir; I saw both of them sign the paper right in my presence. I asked Mr. Eppler to sign as a witness.

[*Answer objected to as not competent evidence.*]

Q. 18. The "Draper-Eppler letter," of December 18, 1877, says: "Inclosed I return the agreement for Kissinger." Is, or is not this agreement just referred to the inclosure referred to in the letter?

A. This is the agreement referred to.

Q. 19. State whether you received this letter and inclosure by mail at about the time of its date.

[*Objected to as leading.*]

A. Yes, sir; I received it by mail.

[*Said letter is put in evidence marked "Draper-Eppler Letter, Dec. 18, 1877," and is as follows:*

"Magnolia Decm 18, 1877.

Mr. Herman Eppler Dear Sir inclosed I return the Agreement for Kissinger with the stock claus intirely left out. the understanding between him and me was, that I was to find one-half the young stock and one-half the corn to feed them. My only object was to feed the grain on the farm so as to improve it. But if Kissinger don't like that all right with me, and if He won't sign this agreement, He can stay under the old agreement and pay a certain Rint, and if he don't like that, I think the Farm can be Rented to Esqr Foulk's son in law Mr. Wallace. Kissinger could pay all his Rents in improvements if he would. The Ram to throw up the water he was to put in and the Barn wants repairing. There needs a back Poarch & smoke house And Privy. He could haul the stone do the carpenter work, and change around so as to have but little money to pay, but I must have my rents in some way. I cant aford to keep the property and get nothing for it. I think I am as easy satisfied as anybody could be but must have my rents somehow. Write to me at once and let me here what he does.

The calculation is now that my vessel will go to Philadelphia next trip. If she does you may look for the Oysters about the middle of next week. We are all well as usual.

Ever Truly Thomas Draper."

[*Said inclosure is put in evidence, marked "Draper-Kissinger lease on shares, December 4, 1877," and is as follows:*

"Articles of Agreement made and concluded, and agreed upon this 4th day of December, in the year of our Lord One Thousand Eight Hun-

dred and seventy-seven, between Thomas Draper, of Kent County, and State of Delaware, of the first, and George Kissinger, of Perry County, and State of Pennsylvania, of the second part, as follows, to wit:

The said Thomas Draper, for himself, his heirs, executors, or administrators, doth, for and consideration of the yearly rents and proffits, hereinafter mentioned, agree and by these presents does rent unto the said Kissinger, party of the second part, his Farm, situated in the Borough of Marysville, in said county of Perry, and State of Pennsylvania, on which the said Kissinger now resides and occupies as tenant, for the term of one year, commencing from the 1st day of April, 1878, and to continue so long as both parties can agree, or untill legle notice to move shall have been given by one of the parties

The said Kissinger is to farm and cultivate said farm in a good and farming-like manner, prune and cultivate the orchard and hedges, and keep up the fencing, and is to pay unto the said Draper one half of everything that is raised or grown on said farm each and every year, except such garden truck and potatoes as the said Kissinger may consume in his own family; that is to say, he is to deliver to said Draper's order, or in good merchantable order, one half the corn, wheat, oats, Rye, Potatoes, Tobacco, Peaches, Apples, & Cherries, or if the apples be made into cider Vinegar, one third of that. And said Kissinger is to pay for one half the Fertilizer used on said farm, and pay the freight from Philadelphia, and pay the school taxes, provided he rents any part of the *Dwelling-house*, or has any other Family living in said house, and said Draper is to pay all other *taxes*, and pay for the other half of the fertilizer and diliver it on the cars at the Depot in Philadelphia, and pay for all the lime that may be necessary to be used on said farm during the year, or so long as said Kissinger may stay, delivered at the depot in Marysville, which said Kissinger is to hawl and spread at his own expence.

In witness whereof we the above-named parties have hereunto sett our hands and seals.

Thomas Draper, [Seal.]
Geo. Kissinger. [Seal.]

Witness:

G. W. Eppley."

Both the above letter and contract objected to because not properly proved, and because the attesting witness has not been called, and also because immaterial.]

Q. 20. It has appeared that the ram on the Draper farm had connected with it some wooden piping made of logs cut and bored by Mr. Kissinger; do you know anything about where the logs for that piping were cut and when it was that they were cut; and if so, state how you came to know about it?

[Same objection as to question 12.]

A. I went out gunning in the latter part of 1877 and came through

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the young chestnut timber of Mr. Draper's. My brother, Simon G. Eppler, was with me at the time. I found some stumps and tops of chestnut timber lying there—the tops lying down and the stumps standing where the trees stood. I saw they were cut and I said, "I am going down to see Mr. Kissinger who cut them trees down." I found Mr. Kissinger down at the barn; I asked him who cut them timbers; he said he cut them for pipes or spouting for the ram—something to that effect.

[Answer objected to because hearsay and incompetent.]

Q. 21 Did you see any of those chestnut timbers when you went down to the barn at that time or not?

[Same objection, and also because leading.]

A. I didn't see them at that present time.

Recess until 7.30. P. M.

Q. 22. How long did you stay at Mr. Kissinger's barn that day, and where did you go to from there?

A. Well, I might have staid there fifteen minutes; I don't think I stayed over that. I went back through the orchard, and back to the woods again, to go gunning.

Q. 23. Did you afterwards see any of those chestnut timbers at Mr. Kissinger's place; and if so, how soon afterwards, and was any work being done on them when you saw them?

[Same objection, and also as leading.]

A. Yes, sir; I saw them afterwards—it might have been two weeks after that. There was one or more bored, and the auger was in one. The auger was standing still and there was nobody boring at them when I saw them.

Q. 24. You say this was in the latter part of 1877 that you saw the timber cut in the woods. Can you give me any nearer idea of how late in 1877 it was?

[Same objection.]

A. It was along close to the holidays. As near as I can get at it, it was in December. I know it wasn't a great way off of the holidays.

Q. 25. How do you know it wasn't a great way off of the holidays?

[Same objection.]

A. I know it on account of the gunning season coming near to the end. It was getting near the end of the gunning season when we went

out. I never go out gunning after the season has closed—not mountain gunning.

Q. 26. When do you understand that that gunning season closes?

[*Same objection.*]

A. The first of January.

Q. 27. Why did you take the trouble to walk down from the mountain to ask Mr. Kissinger who had been cutting Mr. Draper's young chestnut timber?

[*Same objection.*]

A. Well, being his appointed agent, I supposed it was my duty to see to his interest—to see whether they were cut for anything on the farm or place, or whether they were taken by other parties.

Q. 28. You say you saw the ram on the Kissinger place in 1878. When you saw it there in that year, had it been in a long time or a short time?

[*Same objection, and also because calling merely for the opinion of the witness.*]

A. It had been in but a short time.

Q. 29. What time of the year was it when you saw it in 1878? and if there is anything which helps you to fix the time of the year, please state it.

[*Same objection as to question 12.*]

A. Well, it was in November; Mr. Draper was up at the time, and I was up to see him, but he wasn't at home—wasn't at Mr. Kissinger's—Mr. Kissinger and he had gone away to some of the neighbors.

Q. 30. Were you up there while they were actually at work setting the ram?

[*Same objection.*]

A. No, sir; not while they were setting it.

Q. 31. Did you know that the ram was in there before you went up and saw it in November, 1878, during Mr. Draper's visit?

[*Same objection.*]

A. Mr. Kissinger told me they were putting it in and wanted me to come up and see them working at it, but I couldn't go.

[*Answer objected to because merely the hearsay statement of another of complainants' witnesses.*]

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Q. 32. Why couldn't you go?

[Same objection.]

A. Because it was election day, and I wanted to go to the election and try and collect in some money—parties that I couldn't see no other time. I thought I would have the privilege of going to vote, and then I would find my men.

Q. 33. Please look at the promissory note now shown you, dated November 19, 1878, for \$114, and state in whose handwriting is the manuscript part of the body of the note, and in whose handwriting the two signatures.

[Same objection.]

A. Mr. Draper's in the filling out of the note, and Mr. Kissinger's signature and my own.

[The note is put in evidence, and is as follows, the parts in manuscript being in italics:]

"\$114 00.

HARRISBURG, PA., Nov. 19, 1878.

Twelve months after date I promise to pay to the order of Thomas Draper at the Farmers' Bank One Hundred and Fourteen Dollars without defalcation for value received *with lawful interest from date.*

Credit the Drawer.

Geo. W. Kissinger.

Witness

Due, Herman J. Eppler."

Across the left-hand end of the note is printed "Farmers' Bank, Harrisburg, Pa.," and upon its back is written, "George Kissinger Note \$114, due Nov. 19. 1879," followed by a calculation of interest.]

Q. 34. Please answer the same as to the note now shown you for one hundred dollars of the same date.

[Same objection.]

A. The same as the other—filled out by Thomas Draper and signed by Mr. Kissinger and myself.

[The note is put in evidence and is as follows, the written parts being indicated by italics:]

"\$100.

HARRISBURG, PA., November 19, 1878.

Two years after date I promise to pay to the order of Thomas Draper at the Farmers' Bank, One Hundred Dollars without defalcation for value received *with interest from date.*

Credit the Drawer.

George W. Kissinger."

Witness,

Due, Herman J. Eppler.

Across the left-hand side of the note is printed, "Farmers' Bank, Harrisburg, Pa.," and upon its back is written, "George Kissinger, Note for \$100 due November 19, 1880. (Balance due Mr. Kissinger, \$54 21.)

Balance due Mr. Kissinger, \$34 61." The words and figures above included in parentheses having been crossed out by drawing the pen through them.]

[Same objection.]

Q. 35. The printed part of the dates of these notes reads "Harrisburg;" whereabouts were the notes in fact signed?

[Same objection.]

A. They were signed right in my shoe place, at Marysville.

Q. 36. Was Mr. Draper present, or not, at the time they were signed?

[Same objection, and also because immaterial and irrelevant, incompetent, and leading.]

A. Yes, sir; he was present.

Q. 37. Did Mr. Draper make any other visit to Marysville during the fall of 1878 except the one during which these notes were signed?

[Same objection.]

A. Not to my recollection.

Q. 38. Were these notes signed on the day of their date, or not?

[Same objection.]

A. Yes, sir; they were signed on the day of their date.

Q. 39. Did it ever occur while you were agent for Mr. Draper that a couple of hundred feet of piping, which led from the ram to the house, was taken out, thrown away, and new iron piping put in place of it?

[Same objection.]

A. No, sir.

Q. 40. The first time you saw any ram on the Draper farm, was there any member of Mr. Draper's family there, if you know?

[Same objection, and also because leading.]

A. Yes, sir; his daughter Jennie was there.

Q. 41. You have testified that Mr. Draper was at Marysville in the early part of 1877, before he sent you the power of attorney of March 8, 1877; was he up again at Marysville during the year 1877?

[Same objection.]

A. Yes, sir; he was there in November, 1877.

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Q. 42. If you have anything that helps you to fix the date when he was there in the latter part of 1877, will you state what it is?

[*Same objection.*]

A. Mrs. Draper was along up with him, and her shoes hurt her feet, and Mr. Draper came to my place and got a pair of shoes longer than the ones she was wearing. I charged them against him in my book on the 12th day of November, 1877.

Q. 43. If you have the sheet here on which that charge was made, will you please produce it and point it out?

[*Same objection, and also because manifestly incompetent, as the leaf here produced and handed to the witness by complainants' counsel is evidently cut from an account-book, which account-book is suppressed, or at least not here produced.*]

Complainants' counsel object to the person who made the last objection undertaking to testify as an expert, unless he is sworn and offered for cross-examination.]

A. Yes, sir; here it is.

[*Witness produces sheet and points out the following entry under date of November, 1877:*

"12 Thomas Draper. 2.75."

The entry is crossed out by drawing a pen through it, as are all the entries on the page.

The paper is put in evidence, and is marked "Exhibit Eppler Shoe Account."

Same objection as that made to the above question.

Same reply.]

Q. 44. It has been stated that upon one occasion Mr. Draper and Mr. Kissinger drove over from Marysville to Drawbaugh's shop to order the ram that was put upon the Draper farm; do you know anything about their going over there for that purpose; and if so, what?

[*Same objection as to question 12.*]

A. Yes, sir; they stopped at my place on their way over, and told me they were going over to order a ram to throw water up to the house.

[*Answer objected to because hearsay statements.*]

Q. 45. Was this while you were agent, or before you were agent?

[*Same objection.*]

A. Yes, sir; while I was acting agent for him.

Q. 46. Were Mr. Draper and Mr. Kissinger in the habit of coming to your place during Mr. Draper's visits to Marysville after you had agreed to become his agent, or not?

[*Same objection, and also because leading.*]

A. Yes, sir; they would come there very often in the evening, and sometimes during the day—both of them—Mr. Kissinger and Mr. Draper.

Q. 47. Were Mr. Kissinger and Mr. Draper in the habit of coming to your place during Mr. Draper's visits to Marysville before you agreed to become Mr. Draper's agent, or not?

[*Same objection as to question 12.*]

A. No, sir; they didn't come there. Mr. Kissinger did sometimes on his own business, but Mr. Draper didn't visit there.

Q. 48. What do you mean by your "place" in these last answers?

[*Same objection.*]

A. My shoe-store, or shoe-house, or whatever you call it.

Q. 49. When did you begin to keep a shoe-store in Marysville?

[*Same objections.*]

A. January 11, 1876.

Q. 50. What had been your occupation for a number of years last before that?

[*Same objection.*]

A. Having charge of the engines in the Northern Central round-house.

Cross-examined, de bene esse, by Mr. Jacobs:

Cross-Q. 51. When the complainants were taking testimony in this case in this hotel last winter a year ago, you were brought here by them, were you not?

A. Yes, sir.

Cross-Q. 52. Will you tell me the time when they brought you here?

A. I do not know whether it was in February or March—one of them two months; I have got no date for it.

Cross-Q. 53. You were living at that time in Baltimore, were you not?

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A. Yes, sir.

Cross-Q. 54. Who came after you?

A. Mr. Comfort.

Cross-Q. 55. And he accompanied you from Baltimore here to this hotel, did he?

A. No, sir.

Cross-Q. 56. Did you come by yourself?

A. He came after me to come to Harrisburg.

Cross-Q. 57. Did you go to Harrisburg?

A. Not at that time; I promised to go, and didn't go on account of my wife being sick.

Cross-Q. 58. Can you tell me when it was he came after you to go to Harrisburg?

A. I have no date to it.

Cross-Q. 59. Was it earlier than February of 1883?

A. It might have been the latter part of January or beginning of February, 1883. I really couldn't tell.

Cross-Q. 60. Did he tell you what he wanted you to go to Harrisburg for?

A. To go with him to Marysville to get some papers and letters that I had, which were produced here.

Cross-Q. 61. You say you did not go to Harrisburg at that time. Did you afterwards go there in compliance with Mr. Comfort's request?

A. Mr. Comfort and Mr. Storrow came to see me after that, and asked me whether I would come up at a certain time. I agreed to come, and done so.

Cross-Q. 62. When did they come to see you?

A. A few days or a week after Mr. Comfort was there the first time.

Cross-Q. 63. When did you go to Harrisburg in compliance with their request?

A. Either the next day or the second day after they were there.

Cross-Q. 64. And that was some time in February, was it?

A. To my recollection, it was.

Cross-Q. 65. Did either Mr. Storrow or Mr. Comfort meet you at Harrisburg or Marysville?

A. We met at Harrisburg.

Cross-Q. 66. Did you meet both of them there?

A. Yes, sir.

Cross-Q. 67. And you all went to Marysville together, did you?

A. Yes, sir.

Cross-Q. 68. Where did you go when you left Marysville?

A. I came to Harrisburg and took the train for Baltimore from there.

Cross-Q. 69. How long after your return to Baltimore was it that you came here to Philadelphia?

A. I can't fix the time.

Adjourned until May 15, 1884, at 10 o'clock.

May 15, 1884, 10, A. M.

Examination resumed.

Present, same counsel.

Cross-examination of Herman J. Eppler, by Mr. Jacobs, continued:

Cross-Q. 70. At whose request did you come to Philadelphia in February or March, 1883?

A. At Mr. Storrow's request.

Cross-Q. 71. How was his request communicated to you?

A. By telegraph.

Cross-Q. 72. Had you agreed with him, when you were with him and Mr. Comfort at Harrisburg and Marysville, that you would come to Philadelphia on telegraphic notice?

A. No, sir; not at that time.

Cross-Q. 73. At what time had you?

A. He telegraphed me to come to Harrisburg, after the time he and I were at Marysville together, and I went back to Baltimore.

Cross-Q. 74. Who telegraphed to you to come to Harrisburg?

A. I think the message was signed by Mr. Comfort. I wouldn't say for certain, but I think so.

Cross-Q. 75. Did you go to Harrisburg in response to that telegram?

A. Yes, sir.

Cross-Q. 76. Whom did you meet there?

A. Mr. Storrow and Mr. Comfort.

Cross-Q. 77. Whereabouts in Harrisburg did you meet them?

A. At the United States Hotel.

Cross-Q. 78. What did they want of you there this time?

A. Well, they wanted to know—we got into a buggy and drove across the river. I believe that was the start of it.

Cross-Q. 79. What did they want to know?

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A. Where the shop stood that Mr. Sadler and I were at, at a place called Milltown.

Cross-Q. 80. What Mr. Sadler was that?

A. Mr. Joseph Sadler.

Cross-Q. 81. Is he living or dead?

A. Dead.

Cross-Q. 82. Who got into the buggy with you and drove across the river?

A. Mr. Storrow and Mr. Comfort. Mr. Comfort got out at Bridgeport.

Cross-Q. 83. What was the object of your going over there to locate the shop at Milltown?

A. Well, I had told Mr. Storrow that I was over there and saw—was over there with Mr. Sadler—and I couldn't exactly explain where the shop was.

Cross-Q. 84. Saw what?

[Complainants' counsel object to the inquiry, because it is outside of the matters inquired of on the direct examination; and further say that if the defendants interrogate the witness upon that subject, they make him their witness, and are bound by his answers.]

Defendants' counsel calls attention to the fact that he is merely asking the witness for the information which he gave to complainants' counsel.

Complainants' counsel reply that the adroitness with which the cross-examination is conducted is apparent, but unavailing to cover its real purpose, as will more fully appear when the various conferences between this witness and the counsel and agents of the defendants, upon the subject of this visit and other matters, shall appear.]

A. The shop where I should have been at.

Cross-Q. 85. Is that all that you told Mr. Storrow you had seen over there—only the shop?

[Same objection.]

A. No, sir; I told him that I had seen a wagon there with the wheels repaired—not the wagon, but the wheels of the wagon.

Cross-Q. 86. Is that all?

[Same objection.]

A. One man in there showed Mr. Sadler a box and something in the shape of a cup or bowl.

Cross-Q. 87. Is that all you told Mr. Storrow on the subject?

[*Same objection.*]

A. I said that he called it a speaking-trumpet. I don't think he called it a telephone. I think he called it a speaking-trumpet. He was not talking to me; he was talking to Mr. Sadler.

Cross-Q. 88. Did you tell Mr. Storrow when it was that you and Mr. Sadler made this visit to Milltown?

[*Same objection.*]

A. I think I mentioned 1874 first to him, but didn't tell him it was 1874. I told him I had to have something to go by to make the date—to make the year.

Cross-Q. 89. Didn't you tell him it was 1872 or 1873?

[*Same objection.*]

A. No, sir; not to my recollection.

Cross-Q. 90. Did you and Mr. Storrow go anywhere else that day besides going to Milltown?

[*Same objection.*]

A. Well, now, do I understand that correct? Is it after we left Milltown?

Cross-Q. 91. Either before or after you were at Milltown.

[*Same objection.*]

A. Well, we drove through Milltown and on the other side, and turned around and came back, and came down past Eberly's mill, and down into a wilderness there that I have never been before nor since; and he asked me whether that wasn't the place I was at. I answered "No, sir; that I never knew there was such a building there."

Cross-Q. 92. Did you tell Mr. Storrow the name of the man at whose shop you had been with Mr. Sadler?

[*Same objection.*]

A. I told Mr. Storrow that Mr. Sadler called him Drawbaugh; I didn't speak to him at all myself.

Cross-Q. 93. And it was because of what you had told Mr. Storrow that he took you over to Milltown to have you point out the shop, was it?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 94. Were you anywhere else together that day?

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A. We came back to Harrisburg together.

Cross-Q. 95. How long were you at Harrisburg on the occasion of this second visit there that you have spoken of?

A. About eight or nine hours from the time I arrived there until I left again.

Cross-Q. 96. Where did you go from Harrisburg?

A. I went to Philadelphia.

Cross-Q. 97. Who went with you?

A. Mr. Storow.

Cross-Q. 98. How long after your first visit to Harrisburg, concerning which you testified last evening, was this second visit there made?

A. I could not tell the time.

Cross-Q. 99. Was it only a few days, or a week, or more? Give me your best recollection.

A. It might have been three or four weeks after the first time I was up there, to the best of my recollection.

Cross-Q. 100. Had you seen any of the counsel or agents of the Bell Telephone Company in the meantime?

A. Meaning between the two? no, sir; I didn't.

Cross-Q. 101. When you arrived at Philadelphia you were brought immediately to the hotel Lafayette, where complainants were taking their testimony, were you not?

A. I came to the hotel here; I did not know whether they were taking testimony or not.

Cross-Q. 102. Whom did you meet here at the hotel?

A. I think the old gentleman—Mr. Smith—was here; I think he is the gentleman I met, besides Mr. Storow.

Cross-Q. 103. Do you mean Mr. Chauncey Smith, one of the counsel for the complainants in this case?

A. Yes, sir.

Cross-Q. 104. Whom else did you meet here?

A. No person.

Cross-Q. 105. Had you any talk with Mr. Smith about the subject of Kissinger's ram?

A. Not to my recollection.

Cross-Q. 106. I suppose that you and Mr. Storow and Mr. Comfort had talked that matter over before you came to Philadelphia, had you not?

A. To the best of my knowledge they only asked me for papers—

whether I had any letters or papers about the ram. To the best of my knowledge that was all there was about the matter; there was very little talk about it.

Cross-Q. 107. Which of them first came to see you?

A. Mr. Comfort.

Cross-Q. 108. What did he say to you?

A. I think he is the one that first mentioned the paper and letter business.

Cross-Q. 109. Tell us all he said in the interview when he first came to see you.

A. I can't tell any of the conversation, only that he spoke about the papers; and I told him they were at Marysville, and I would have to go up there and get them.

Cross-Q. 110. This was at your place of business at Baltimore, was it?

A. It was at Baltimore—not at my place of business, though.

Cross-Q. 111. Where then?

A. At the boarding-house where I boarded.

Cross-Q. 112. How long was he there?

A. He might have been there half an hour, more or less.

Cross-Q. 113. But your best recollection is that he was there about half an hour?

[*Objected to as already answered, the repetition calling merely for guess-work.*]

A. Yes, sir.

Cross-Q. 114. And you can't remember any of the conversation except what you have given in your 109th answer?

A. No, sir.

Cross-Q. 115. Did he tell you how he came to suspect that you had any letters or papers in your possession?

A. Not to my recollection.

Cross-Q. 116. What letters and papers did he ask you for?

A. Of being agent for Mr. Draper.

Cross-Q. 117. Then, the fact of your being agent for Mr. Draper was mentioned in that conversation, was it?

A. I cannot tell whether it was or not.

Cross-Q. 118. Will you tell me, as nearly as you can, the words in

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which Mr. Comfort asked you for the letters and papers relating to your agency for Mr. Draper ?

A. I think he told me that somebody else told him that I had some papers ; but I won't—I was called up out of bed ; I had lost a great deal of sleep, had a sick wife, and I paid very little attention to what he did say to me ; I didn't know the gentleman.

Cross Q. 119. Did he in any way describe the papers that he wanted ?

A. I rather think he asked me if I had any papers that Draper had written to me concerning the farm ; or something to that effect.

Cross-Q. 120. Did he tell you what he wanted with them ?

A. I don't think he did at that visit ; not to my recollection.

Cross-Q. 121. Did he tell you who had told him that you had papers of the kind that he asked for ?

A. No, sir ; I think not.

Cross-Q. 122. When was it that he told you what he wanted with the papers ?

A. After I disappointed him in going to Marysville—when he made the second visit to Baltimore—Mr. Comfort and Mr. Storrow.

Cross-Q. 123. What did they say on the subject at that time ?

A. They called to see me ; and Mr. Storrow made himself known, and Mr. Comfort was with him ; then Mr. Storrow asked me whether I had any papers concerning the ram that was put in on the farm by Kissinger and Draper.

Cross-Q. 124. Did Mr. Storrow say how he had come to suspect that you had any papers relating to that matter ?

A. Not to my recollection.

Cross-Q. 125. Where did this conversation take place ?

A. At my boarding-house.

Cross-Q. 126. What time of day was it ?

A. It was after night—after I closed the shoe-house ; I don't know what hour.

Cross-Q. 127. How long were they there ?

A. In the neighborhood of an hour, to the best of my recollection.

Cross-Q. 128. Tell me all that was said in that conversation, so far as you can remember.

A. They asked me to go along to Marysville, or come to Marysville, and see whether I could find them papers that they had made inquiries for. I think they looked over a lot of letters and papers that I had at Baltimore, but I am not certain.

Cross-Q. 129. Well, go on and tell us anything else you can recollect of that conversation.

A. That is all I can recollect about it.

Cross-Q. 130. The conversation, I suppose, was upon the subject of the papers, and your relations with Draper and Kissinger, and your knowledge of what took place on the Draper farm during your agency for Draper, was it not?

A. To the best of my recollection, it was.

Cross-Q. 131. And can't you recollect anything that was said upon those subjects, in a conversation lasting in the neighborhood of an hour, except ~~that~~ they asked you to go up to Marysville and see whether you couldn't find the papers they were inquiring for?

A. No, sir; I can't bring anything to recollection.

Cross-Q. 132. Well, you promised them to go, did you not?

A. Yes, sir.

Cross-Q. 133. And fixed a time for going?

A. Yes, sir; I think I said I would be up the next day or the second day; I can't tell which. I know I made a promise to go.

Cross-Q. 134. Did you give them any papers at the time that they visited you at the boarding-house?

A. Not to my recollection.

Cross-Q. 135. How long were you at Harrisburg and Marysville when you went up there to hunt papers?

A. I rather think I went up in the morning from Baltimore and came back the same evening. I don't think I staid over night.

Cross-Q. 136. Didn't you remain over night with your brother in Marysville and return to Baltimore the next morning?

A. No, sir; I came to Harrisburg that afternoon, and came right through to Baltimore.

Cross-Q. 137. What time did you leave Baltimore to go up?

A. I think I left on the night train. I couldn't tell you what time I went away, but it was late at night.

Cross-Q. 138. What time did you reach Harrisburg?

[*This line of cross-examination objected to as a frivolous waste of time.*]

A. I couldn't tell you unless I had a schedule to see what time the trains go by; and I don't know as I could hit the train then.

Cross-Q. 139. Was it day-time or night-time?

A. It was night-time, to the best of my knowledge.

Cross-Q. 140. When did you go up to Marysville?

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A. I went up in the forenoon—next morning—but I couldn't tell no time when the train pulled out. They change so often that I couldn't tell when the train left.

Cross-Q. 141. Did you find any papers at Marysville?

A. Yes, sir.

Cross-Q. 142. How many?

A. I think there were somewhere in the neighborhood of six or seven.

Cross-Q. 143. I suppose Mr. Storrow and Mr. Comfort examined them with you, did they?

A. Yes, sir.

Cross-Q. 144. After you were all through examining them did you retain them, or did you give them to Mr. Storrow and Mr. Comfort?

A. Mr. Storrow and Mr. Comfort got the letters and took them away.

Cross-Q. 145. Have they been in their possession ever since?

A. Yes, sir.

Cross-Q. 146. Did you ever at any other time give Mr. Storrow and Mr. Comfort, or either of them, any other papers relating to the Draper farm, or your agency for Mr. Draper?

A. I gave Mr. Comfort a letter afterwards at Baltimore.

Cross-Q. 147. When was that?

A. I could not set any time for it. It might have been in April, May, June, or somewhere along there; I can't set no time.

Cross-Q. 148. It was after you had been down to Philadelphia, was it?

A. Yes, sir; I can come nearer to it—now—when he got it. It was after my wife died. It might have been in August or September.

Cross-Q. 149. When did your wife die?

A. The 27th of July, 1883.

Cross-Q. 150. Has that letter which you gave Mr. Comfort been produced in evidence in this case during the taking of your deposition?

A. Yes, sir.

Cross-Q. 151. Which of the letters produced is it?

A. This is the letter, [indicating letter marked "Draper-Eppler Letter, Dec. 18, 1877"].

Cross-Q. 152. Where and when had you found that letter?

A. It was found in a room by my daughter in a book. My wife had it in the room at the boarding-house.

Cross-Q. 153. Was it found after, or before your wife's death?

A. I can't recollect; she was cleaning up the room, and putting

things in place when she found the letter; I wasn't there myself when it was found; I was down at the shoe-house.

Cross-Q. 154. Did she give it to you or call your attention to it after, or before your wife's death?

A. That I can't recollect; she told me what book she found it in.

Cross-Q. 155. Can you tell how long after she gave it to you, or called your attention to it, it was that you gave it to Mr. Comfort?

A. I cannot.

Cross-Q. 156. Are these six or seven letters which you gave Mr. Comfort and Mr. Storrow at Marysville, and the letter which you gave Mr. Comfort after your wife's death, the only letters or papers relating to the Draper farm, or your agency for Mr. Draper, that you have been able to find up to the present time?

A. Yes, sir.

Cross-Q. 157. Have you given any letters or papers of any kind, besides those mentioned in my last question, to Mr. Comfort, or Mr. Storrow, or any one representing or acting for the Bell Company?

A. Not to my recollection.

Cross-Q. 158. The letter which you say your daughter found in a book remained in your possession, I suppose, up to the time when you gave it to Mr. Comfort, did it not?

A. I just left it in the book where she had found it till Mr. Comfort came there.

Cross-Q. 159. I suppose you had not shown it to any one between the time she found it and the time Mr. Comfort came there and took it away, had you?

A. No, sir.

Cross-Q. 160. And it has been out of your possession ever since you gave it to Mr. Comfort, has it?

A. Yes, sir.

Cross-Q. 161. What is there about that letter that fixes it in your mind as the one that you gave to Mr. Comfort?

A. The mention of the ram. There is not another one that mentions the ram and where he was to do this work.

Cross-Q. 162. And the mention of the ram in it is what makes you certain that it is the letter which your daughter found in the book, and which you gave to Mr. Comfort after your wife's death?

[*Question objected to as intentionally blind and misleading.*]

A. Yes, sir.

Cross-Q. 163. As counsel for complainants has objected that the last question is intentionally blind and misleading, I will hand you the letter marked "Draper-Eppler letter Dec. 18, 1877," and ask you where and by whom it was found.

A. It was found by Mrs. Stone, my daughter, in a bed-room, in a book, at the boarding-house.

Cross-Q. 164. And I will ask you further how it came into the possession of the complainants.

A. To the best of my recollection I sent a letter or a postal to J. J. Storrow that I had found, or that there was found, another letter concerning the Draper farm, and that it mentioned the ram. Then Mr. Comfort came to the boarding-house and asked me for the letter that was found after they had been there. I went up to the bed-room, and got it, and gave it to him.

Recess until 2.30, P. M.

Cross-Q. 165. How did you come to send a letter or postal to Mr. Storrow informing him that there was found another letter concerning the Draper farm, and that it mentioned the ram?

A. I told him in case I found any letters or papers that I would notify him.

Cross-Q. 166. When had you told him this?

A. After he got the other letters. I guess it was at the same time he got the other letters. I told him that in case I found any more I would notify him.

Cross-Q. 167. When Mr. Storrow brought you down to Philadelphia in February or March, 1883, how long did you remain here?

A. From morning until noon.

Cross-Q. 168. Did you understand what you were brought down here for?

A. He didn't say what he brought me down for. He showed me some boxes, and some other instruments with them, and asked whether I had ever seen any of them before—like them. I saw one box that I had an idea that I did see, or something like it.

Cross-Q. 169. What time in the morning did you arrive here?

A. At the hotel, or in the city?

Cross-Q. 170. In the city?

A. I can't tell. I was asleep. I came down in a sleeper and staid in the car till daylight; I can't tell what time I arrived in the city.

Cross-Q. 171. What time did you reach the hotel?

A. About seven o'clock, as near as I can tell.

Cross-Q. 172. Wasn't the subject of the ram talked about between you and Mr. Storrow whilst you were in the hotel?

A. Not that I know of.

Cross-Q. 173. Was it talked about at Marysville or Harrisburg?

A. Yes, sir; it was talked of at Marysville.

Cross-Q. 174. I mean between you and Mr. Storrow or Mr. Comfort?

A. Yes, sir.

Cross-Q. 175. Were you told by either of them when the Kissinger family claimed that the ram was put in?

A. No, sir; I wasn't.

Cross-Q. 176. Were you told by either of them anything about what appeared upon the railroad books as to the receipt of any iron pipes which were used about the ram?

A. After they left my shoe place there—or my brother's place, rather, at that time—they came down on the noon train. I got on at the Haley's station, as it was called then, and met Mr. Comfort and Mr. Storrow on the train on the way to Harrisburg. They told me they were up to see Mr. Geib's books. I don't know whether there was anything more mentioned about the book matter or not.

Cross-Q. 177. Don't you recollect of their telling you anything that Mr. Geib's book contained?

A. Not at that time.

Cross-Q. 178. When then?

A. It was in the neighborhood of three weeks ago, I reckon, when Mr. Storrow told me of it.

Cross-Q. 179. What conversation did you have with him at Marysville on the subject of the ram?

A. Mr. Storrow asked me whether I knew when it was put in. I told him late in the fall of 1878.

Cross-Q. 180. Was that all that was said between you and Mr. Storrow about the ram on that occasion?

A. To my recollection, that was all.

Cross-Q. 181. Didn't he question you to find out what reason you had for fixing the date which you say you gave him?

A. Well, Mr. Kissinger came down and told me to come up and see

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them; that they were going to put the ram in next day, or were working at it that day—the one or the other—The next day was election day, and I couldn't go up on account of. I staid at the polls to put in my vote, and then I staid there to try and collect in some money from parties that I couldn't hardly see at no other time.

Cross-Q. 182. That was the reason you gave, was it, for fixing the date of the putting in the ram in the fall of 1878?

A. Yes, sir.

Cross-Q. 183. The subject of the ram was talked about between you and Mr. Storrow and Mr. Comfort at various times during your different interviews with them before you were brought down to Philadelphia, was it?

[Complainants' counsel again object to the continuance of this style of cross-examination as a frivolous waste of time, peculiarly improper under the present circumstances.]

A. Yes, sir.

Cross-Q. 184. The papers which you gave, then, at Marysville disclosed the fact that you were acting as agent for Mr. Draper in connection with this farm during the year 1878, did they not?

A. Yes, sir.

Cross-Q. 185. After leaving Philadelphia, when did you next see, or receive any communication from, any one acting on behalf of complainants?

A. I can't think when the next—Comfort was to see me one time, but I can't tell when it was. I have no date for it. I have nothing to go by.

Cross-Q. 186. Was it before or after your wife's death?

A. I cannot tell.

Cross-Q. 187. What did he want with you?

A. He asked me whether I had found any more papers concerning the Draper farm. And then he wanted to know whether I knew anything about some logs or timbers being bored at the time, or before I became agent for Mr. Draper. I told him there were none there bored or laying around anywhere that I knew of when I took charge of the place.

Cross-Q. 188. You had no letter or paper to give him at that time, I suppose, had you?

A. No, sir.

Cross-Q. 189. When he afterwards came and got from you the letter marked "Draper-Eppler Letter, December 18, 1877," did you give it to him, or lend it to him, or how?

A. I don't know whether he got that letter before or after; I have got no date for that time that he was there, nor no date for the time he got the letter.

Cross-Q. 190. When he got the letter from you did you give it to him, or lend it to him?

A. Well, when he came for the letter I told him that I wanted the letter back, and handed it to him, and he gave me a five-dollar bill and told me to hold that as security until he returned the letter.

A. 191. Is it not a fact that he gave you the five dollars for the use of the letter?

A. No, sir; it was in the way I have mentioned. That is the way the words were spoken between him and I.

Cross-Q. 192. You are sure of that, are you?

A. Yes, sir.

Cross-Q. 193. And you are as sure of that as of any other fact to which you have testified in your deposition, are you?

A. Yes, sir.

Cross-Q. 194. When Mr. Storrow and Mr. Comfort got the papers from you at Marysville, did they pay you anything for the use of them?

A. They paid me my expenses for going up and down, and my time. I don't know what else it was for. They promised to satisfy me for my time if I would come up.

Cross-Q. 195. And you are sure they paid you nothing for the papers or for the use of them, are you?

A. Nothing but the five-dollar bill that was deposited as security.

Cross-Q. 196. I am not speaking now of the letter which Comfort got from you at Baltimore, but of the papers which Mr. Storrow and Mr. Comfort got from you at Marysville, and with reference to them I ask the Examiner to repeat my last question.

A. There was nothing mentioned about paying anything for them papers at all.

Cross-Q. 197. And you did not understand that any part of the money which you received on that occasion was for the papers or for the use of them?

A. No, sir; I did not understand it in that way.

Cross-Q. 198. Then, as I understand you, you never received from

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either Mr. Storrow or Mr. Comfort any money for any papers, or for the use of any papers which you gave them, or either of them; is that correct?

[Objected to on the ground that it is a misstatement of the witness' testimony, the inquiry having been hitherto restricted to two particular occasions.]

Counsel for defendants replies that the witness has already stated, in his 156th and 157th answers, that he has not to his recollection given any letters or papers of any kind to Mr. Comfort or Mr. Storrow, or any one representing or acting for the Bell Company, besides the six or seven letters which he gave Mr. Comfort and Mr. Storrow at Marysville, and the letter which he gave Mr. Comfort after his wife's death.

Complainants reply that the witness has not been asked whether he ever received any money for the letters referred to, or for their use; but he has been asked, and the inquiry has been specifically confined to the occasion at Marysville, and to the occasion when Mr. Comfort received the letter at Baltimore, and has not included what passed at any of the subsequent interviews between the parties.]

A. Only the security that they put up.

Cross-Q. 199. You refer to the security which you say that Mr. Comfort put up for the letter which he got from you at Baltimore, do you?

A. Yes, sir.

Cross-Q. 200. And you never received any money from either Mr. Comfort or Mr. Storrow for the use of any letters or papers?

A. No, sir; only security for getting them back. That is the way I understand, or the way I understood it at the time they were got.

Cross-Q. 201. And you are as sure of that, are you, as of any other fact to which you have testified in your deposition?

A. Yes, sir.

Cross-Q. 202. I suppose the letter which Mr. Comfort got from you at Baltimore is of no particular value to you, is it?

A. No, sir, I don't know that it is—any more than the others.

Cross-Q. 203. But no money was deposited with you as security for the others, was there?

A. Only by paying expenses and my time; that is the way I understood it when they paid me the money.

Cross-Q. 204. I am not asking about that, but whether any money

was deposited with you to secure the return of the papers which you delivered to Mr. Storrow and Mr. Comfort at Marysville.

A. No, sir.

Cross-Q. 205. Then why did you receive a deposit to secure the return of the letter which Comfort got from you at Baltimore?

A. I asked him to return the letter to me, and he handed me the money—five dollars—as security for its return; I didn't ask for security.

Cross-Q. 206. I suppose if your daughter had not, as you say, found that letter in the book, you would never have known of its existence, or cared whether it was destroyed or not, would you?

A. Oh, I might have come across it some day; it wasn't lost as long as it was in the book.

Cross-Q. 207. Your accounts with Mr. Draper have been settled, have they not?

A. I sent him a statement, and he never sent me no reply to it.

Cross-Q. 208. How long ago was that?

A. Some time after I moved to Baltimore; I couldn't tell.

Cross-Q. 209. When did you move to Baltimore?

A. March 24, 1882.

Cross-Q. 210. How long after you moved there did you send that statement to Mr. Draper?

A. I think I had it made out before I left Marysville, and mailed it from Baltimore right after I came there.

Cross-Q. 211. That would make it about two years ago that you sent the statement, would it not?

A. Yes; the latter part of March or beginning of April would.

Cross-Q. 212. What was the amount paid you for your expenses and time for that trip to Marysville?

A. To the best of my recollection it was fifteen dollars.

Cross-Q. 213. How sure are you about that?

A. I can't tell you what the amount was if it wasn't fifteen dollars. That is about as near as I can come to it.

Cross-Q. 214. And you understood that it was given you for your time and expenses only, and that no part of it was given for the use of, or as security for, the papers which you delivered up at that time; is that correct?

A. I didn't understand it in that way—that it was for the papers, or for the use of them. I gave them the papers at Marysville, and when we

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come to Harrisburg we got some dinner, then, and Mr. Storrow asked me to go to his room, and got some money out of his pocket; Mr. Comfort handed it to me and asked me whether I was satisfied—if that paid me—the amount they gave me. I then left them, answering "All right."

Cross-Q. 215. In your 142d answer you say that you think the papers which you found at Marysville were somewhere in the neighborhood of six or seven; might there have been more than seven?

A. There might have been more or there might have been less; I didn't take an account of them—didn't mark down how many there was; I was under the impression there was seven.

Cross-Q. 216. Might there have been as many as a dozen or fifteen?

A. Not to my recollection.

Cross-Q. 217. Can you tell me what papers they were?

A. One was an article of agreement between Kissinger and Draper; another was a power of attorney from Mr. Draper to myself to act as agent for him; the rest I don't know—more than that they were letters from Draper; his name was signed to them; I didn't read them when I gave them to Mr. Storrow; I laid them down, and he looked over them.

Cross-Q. 218. In addition to the letter which Comfort got from you, and the power of attorney, and article of agreement spoken of in your last answer, have you not given to Mr. Storrow, or others representing the complainants, as many as sixteen letters relating to the Draper farm?

A. I think not, excepting there was some of Cochran's letters among them—after Draper and Cochran had exchanged properties.

Cross-Q. 219. Do you mean to say that you recollect of giving some of Cochran's letters, or only that you might have done so?

A. Not that time I didn't—when I got the rest.

Cross-Q. 220. Did you at any other time?

A. Not excepting it was when Mr. Storrow and Mr. Comfort was at Baltimore to see me.

Cross-Q. 221. Do you or do you not recollect of giving such letters to them?

A. Mr. Storrow and myself, and I think Mr. Comfort, examined five hundred, or may be a thousand, different papers. To the best of my recollection Mr. Storrow found some papers—or one of us that were looking over the papers—I think he laid some letters out and said perhaps he might use them. I do not recollect whether he took them along or whether they were put back among the rest of the papers.

Cross-Q. 222. That took place in Baltimore, did it?

A. Yes, sir; at my boarding-house.

Cross-Q. 223. That was before you went up to Marysville, was it?

A. Yes, sir.

Cross-Q. 224. Did Mr. Storrow and Mr. Comfort assist you in your search for papers at Marysville?

A. No, sir.

Cross-Q. 225. Were they present whilst you were making the search at Marysville?

A. They were down in the lower part, and I went up-stairs and brought them down.

Cross-Q. 226. Did you bring down all the papers that you found or only such as they took away with them?

A. I brought them all down; they was tied up in packages, and what they didn't take I took with me to Baltimore. There was other letters there, from other parties, in the same box, and some old books with them.

Cross-Q. 227. Did they assist you to make the search through the packages?

A. Yes, sir; after I brought them down stairs.

Cross-Q. 228. Did you find all of the papers which they took away with them, or did they find some?

A. Well, I think I opened the bundles and throwed the envelopes to them that was directed to me by Thomas Draper; and I think they drawed them out of the envelopes; I wouldn't say whether they drawed them out of the envelopes and laid them over, or whether I did it myself; I opened the bundles.

Cross-Q. 229. I suppose you did not read the papers before handing them over to them, did you?

A. Not all of them; I might have read some of them; I read the power of attorney to me from Mr. Draper; I recollect that I asked Mr. Comfort whether that would be any use to him; he laid it with the rest. I do not recollect any answer to it.

Cross-Q. 230. That power of attorney is the only power which you have any distinct recollection of reading, is it?

A. At that time.

Cross-Q. 231. When afterwards did you read any of those papers?

A. Not any of them that I got that time at Marysville.

Cross-Q. 232. Did either Mr. Storrow or Mr. Comfort read aloud in

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your presence the papers which were found there that day, and which they took away with them?

A. Not to my recollection.

Cross-Q. 233. How, then, are you able to say that it is the mention of the ram which enables you to identify the Draper-Eppler letter of Dec. 18, 1877, and to say, further, that there is not another one that mentions the ram?

A. Mr. Storrow told me after he looked over it that it don't mention the ram—them letters that he got from me at Marysville; therefore I wrote to him when I found the other letter that I had one now that mentioned the ram.

Cross-Q. 234. Then, when you gave your 101st answer you were testifying to what Mr. Storrow had told you, and not to what you yourself knew from reading the letters; is that correct?

A. I had all the letters read before Mr. Storrow ever saw them.

Cross-Q. 235. When?

A. Well, when I got them—and I reckon when I packed them up I looked at all my papers, to the best of my knowledge.

Recess until 7.30, P. M.

[By consent the cross-examination is resumed by Mr. Hill, who arrived this afternoon, and now takes the place of Mr. Jacobs, cross-examining *de bene esse*.]

Cross-Q. 236. You have stated that you moved to Marysville in 1862 and left in 1882. What kinds of business were you engaged in, and at what times, during the entire period that you lived at Marysville?

A. I was working for the Northern Central Railway Company in the shop there from 1862 to some time in 1863; I can't tell the time, but the latter part of 1863 I think it was. Then I worked at Mr. Seidel's forge for a short time—up to some time in 1864. Then I enlisted in the army, and was out about ten months. In 1865 I came home—got my discharge. After that I went to work for the Northern Central Railroad Company again up to July 24, 1876. Then I took charge of the shoe place myself. My wife had been tending it before—from the 11th of January, 1876, to July 24, 1876. Then I kept on there in that place till March 1, 1882.

Cross-Q. 237. What regiment and company were you in during 1864 and 1865?

A. 201st Pennsylvania, company H.

Cross-Q. 238. State, as near as you remember, the time when you enlisted and when you were discharged.

A. I think it was in the latter part of September, 1864, and was discharged some time in June, 1865.

Cross-Q. 239. You say that after your discharge you next went to work for the Northern Central Railway Company again, and worked up to July 24, 1876. What kind of work did you do for that company, and where did you do it, during all that period?

A. When I first went there I was one of the hands to help in taking care of the engines—when they came there, to run them in, and when they were wanted again to get them out. I worked that way for about two years, to the best of my recollection, and then I got charge of the engines, and held it until 1876—July 24.

Cross-Q. 240. What pay-roll were you on during that time?

A. That I can't tell. I think I drew my money with what we call the shopmen.

Cross-Q. 241. What paymaster paid you?

A. What they called the Baltimore division pay-boss.

Cross-Q. 242. Am I to understand that you took charge of the shoe place yourself on July 24, 1876?

A. Yes, sir.

Cross-Q. 243. What caused you to leave the employ of the railroad company at that time and take charge of the shoe place yourself?

A. On account of an engine that they found without water—and the boiler was at lower guage. At eight o'clock forty minutes; that is, two hours and forty minutes after I was off duty, Mr. Funk sent for me—the foreman—and told me had to hold me off until he heard from Baltimore, and I told him that if he held me off he didn't need to send for me whether he heard from Baltimore or not. The engine wasn't damaged, and ran over a year after that before she went to the shops for any repairs at her boiler or flues.

Cross-Q. 244. Then you say you took charge of the shoe place yourself. What shoe place was that?

A. It was sold by the assignee of Mr. Reisinger, on Main street, to myself.

Cross-Q. 245. Who was the assignee, and what Reisinger, and when was the assignee's sale to you?

A. John A. Shearer was the assignee of Emanuel Reisinger. On the 11th day of January, 1876, I took it on the appraisement of the ap-

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praisers. There was no public sale—that is, the stock. The building was sold at public sale some time later, and I bought it at the sale. I can't tell no date when the sale was, excepting I would have my deed here.

Cross-Q. 246. State the time when you bought the building, as near as you can from memory.

A. As near as I can tell, about eighteen months after I bought the stock.

Cross-Q. 247. From the time when you bought the stock to the time when you went into the shoe-place yourself, name all the persons who occupied or were employed in the building.

A. Well, my wife, she tended the shoe department down below; Samuel Houser was the workman—the shoemaker—and John Peffley, and then after him James Wagner.

Cross-Q. 248. And, if I understand you, you did business there in that shop until you moved away from Marysville; is that so?

A. Yes, sir.

Cross-Q. 249. From January 11, 1876, till you moved away you kept a shoe-store there, did you?

A. Yes, sir; I took the stock on the 11th, and took charge of it myself on the 24th.

Cross-Q. 250. When you bought the stock from Reisinger's assignee did your purchase include Reisinger's account-books and store-accounts?

A. No, sir.

Cross-Q. 251. Then I suppose that when you commenced business there on January 11, 1876, you opened a set of new books for the store, did you?

A. Yes, sir; the cobbler books were new, but the other book that I had downstairs was an old book that had been used before I was born; it had belonged to my father.

Cross-Q. 252. What books did you keep in the store while you did business there?

A. I kept a book for the cobbling—what the shoemakers done—upstairs, and we kept a book downstairs for our sales below, that is, credit sales; we didn't keep no cash sales in a book, and I would get a dozen of sheets or so of foolscap paper to keep accounts on where parties wasn't regular customers, but would just come in and get an article. That was kept in the back end of the ledger-book, or whatever it is called.

Cross-Q. 253. And those books and foolscap sheets comprised all the store-accounts that you kept while you did business there, did they?

A. Yes, sir.

Cross-Q. 254. What has become of those books and foolscap sheets—where are they now?

A. Some of them at Marysville and some at Baltimore.

Cross-Q. 255. Did you commence keeping those foolscap sheets of accounts in January, 1876, and continue the practice up to the time you moved away?

A. I couldn't tell whether I just commenced in January, 1876, or not, but soon after, and I continued the practice up to the time I moved away.

Cross-Q. 256. When did you first become acquainted with Thomas Draper, and where?

A. Some time after the war; I couldn't name the year; I went to him to write out a deed for me.

Cross-Q. 257. The deed of what property?

A. A house that I bought from a man by the name of John Lightner.

Cross-Q. 258. Where was it situated?

A. On the Valley road, I believe it is called, in the borough of Marysville.

Cross-Q. 259. Give the date of that transaction as near as you can?

A. To the best of my recollection it was in 1867.

Cross-Q. 260. When did Mr. Draper first speak to you about taking charge of his farm as his agent?

A. Either in January or February—or it might have been in the beginning of March—1877.

Cross-Q. 261. At Marysville?

A. Yes, sir.

Cross-Q. 262. Did he orally authorize you at that time to act as his agent?

A. Well, it was a verbal agreement between him and I, that I was to act as agent for him, and he would send me the papers up some time after he got down home.

Cross-Q. 263. Then you acted as agent for a while under the verbal agreement before you got the papers, did you?

A. No, sir.

Cross-Q. 264. When that verbal agreement between you and Mr. Draper was made, what, if anything, was said about the ram?

A. Nothing, to my recollection.

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Cross-Q. 265. Are you willing to swear positively that nothing was said about the ram at that time?

A. Well, I can't think of nothing.

Cross-Q. 266. When did you commence to act as agent for Mr. Draper?

A. The first of April, 1877.

Cross-Q. 267. Has your recollection of that fact and its date always been the same as it is now?

A. I don't know as I understand that right; the date of the agreement or of anything else?

Cross-Q. 268. You say that you commenced to act as agent for Mr. Draper on the first of April, 1877; has it always been your recollection and memory that it was the first of April, 1877, that you took charge of his farm as his agent?

A. Yes, sir.

Cross-Q. 269. Have you never stated to anybody that you took charge of Mr. Draper's farm and commenced to act as his agent at another and different time from that?

A. No, sir.

Cross-Q. 270. Have you never stated to anybody that you had charge of Mr. Draper's farm as his agent, under a verbal agreement with him, for a number of months prior to his giving you the written authorization as his agent?

[Complainants' counsel object, that if the defendants have any time, place, or person in mind, or hereafter intend to introduce evidence of any time, place, or person, they must specify in this question.]

Respondents' counsel reply that the time for this objection will be when the respondents examine a witness to contradict the witness now on the stand, but it is premature now.]

A. Not to my knowledge. I might have said that I was to act agent for him, or something of that kind.

Cross-Q. 271. Didn't you tell Mr. Hill, one of respondents' counsel, at your shop in Baltimore, in the early part of last summer, that you took charge of Mr. Draper's farm, as his agent, on or about the first of October, 1876, under an oral agreement with Draper, and that you so acted as his agent from that time for a number of months following, and until Mr. Draper sent you a written authority, or to that effect?

A. He asked me a question something on that order, and, as near as I can tell, I told him that I couldn't tell when I got the papers from Mr.

Draper. I don't know whether I told him whether Mr. Storrow had the paper that Mr. Draper sent me, but I couldn't fix no date at the time.

Cross-Q. 272. Couldn't fix no date of what?

A. From the time that I was to act agent for Mr. Draper.

Cross-Q. 273. You don't remember the conversation with Mr. Hill very accurately or fully, do you?

A. I know something was spoke of—I know nothing of speaking of acting from October, 1876.

Cross-Q. 274. How many conversations did you have with Mr. Hill last summer?

A. Two.

Cross-Q. 275. Tell us all that you remember of the first conversation that you had with him.

A. Well, himself—Mr. Hill—and a man whom he called by the name of Drawbaugh spoke to me about a man by the name of Shireman coming to see me. He asked me whether I saw any box or instrument at Drawbaugh's shop. I told him I saw a box and a cup there, and a string fastened in a cigar box. I didn't examine it. The gentleman that was in the shop was explaining it to Mr. Sadler, not to me.

[Same objection to this question and answer as to cross-question 84.]

Cross-Q. 276. Is that all that you can remember of that conversation?

A. The ram was mentioned; I don't know whether it was by myself or Mr. Hill.

Cross-Q. 277. You have given certain statements in your 275th answer. Do you mean that those were the statements that you made to Messrs. Hill and Drawbaugh, or the statements that you had made at some time before that time to a man named Shireman?

A. Shireman and I talked of it about the same as Mr. Hill and Drawbaugh and I did. I tried to explain to Mr. Hill what I had talked to Mr. Shireman of. Mr. Shireman was the first party who came to see me.

Adjourned until May 16, 1884, at 10, A. M.

May 16, 1884, 10, A. M.

Examination resumed.

Present, Mr. Storrow and Mr. Howson for complainants, and Mr. Hill, Mr. Dixon, Mr. Jacobs, and Mr. Church for respondents.

Cross-examination of Mr. Herman J. Eppler, by Mr. Hill, continued:

Cross-Q. 278. Referring to the first conversation which you had with Mr. Hill at Baltimore, and to the fact that you then mentioned to Mr. Hill that you had seen a speaking apparatus at Milltown or Eberly's Mills: you told Mr. Hill, did you, that the time when you saw that speaking apparatus was as early as 1872 or 1873, and not later than 1873?

[*Same objection.*]

A. I did not say the word "later;" I told him it was in 1874, as near as I could get at it, and that I had no date.

Cross-Q. 279. Do you mean to say that you told Mr. Hill at that time that it was in 1874?

[*Same objection.*]

A. I told him that it was in 1874, as near as I could get at it, and told him that in case I could find a receipt perhaps I could fix the date.

Cross-Q. 280. Now, didn't you tell Mr. Hill that it was in 1872 or 1873, and as early as 1873?

[*Same objection.*]

A. I cannot bring anything of the kind to recollection; I spoke to him of 1874, and also the same to Mr. Shireman when he was to see me.

Cross-Q. 281. Are you positive that you mentioned the year 1874 to either Mr. Hill or Mr. Shireman as the year in which you made that visit to Milltown?

[*Same objection.*]

A. I am positive that I mentioned 1874, but I told him that I wasn't certain.

Cross-Q. 282. At Mr. Hill's first visit to you, what was said about the Kissinger ram?

A. Mr. Hill asked me whether I was the agent of Mr. Draper, and asked me whether I knew anything of the ram being put in there. He asked me whether I had any papers—I don't know whether he said concerning the ram or the farm. I told him Mr. Storrow had all the papers. I remember he asked me to write for the papers, and I said I would write for them. I wrote for them and the papers didn't come.

Cross-Q. 283. Your recollection of that conversation is a good deal better this morning than it was last evening, is it not?

A. Well, I had time to study over the matter this morning.

Cross-Q. 284. In that first conversation with Mr. Hill, what did you tell him about the ram?

A. I could not tell what the conversation was, on the ram matter. I think that I told him I met Mr. Shireman at York, and he asked me when that ram was put in on the farm; I told him in 1878, and he told me, if I was sure it was 1878, I shouldn't say anything about it. To the best of my recollection, that is the conversation on the ram.

Cross-Q. 285. Who told you you shouldn't say anything about it?

A. Mr. Shireman.

Cross-Q. 286. I was not inquiring of you what you told Mr. Shireman but what you told Mr. Hill on your first conversation; that is, what you told Mr. Hill about your then recollection about the ram.

A. I can't recollect of any other thing that was part of our conversation; if there was any more talk about the ram I don't recollect.

Cross-Q. 287. Perhaps I can refresh your memory a little. Didn't you tell Mr. Hill at that first conversation with him that you took charge of Mr. Draper's farm, as his agent, under a verbal agreement, about the first of October, 1876, and had charge of it under that verbal agreement until you got a power of attorney from Mr. Draper, and that the power of attorney was given you either about the beginning of the year 1877, or else some time in March, 1877, you couldn't tell which, or to that effect?

A. I did not tell Mr. Hill that I was acting agent for Mr. Draper on or under a verbal agreement to my recollection.

Cross-Q. 288. Didn't you tell Mr. Hill that before you received a power of attorney from Mr. Draper you had taken charge of his farm under a verbal agreement, and that when that verbal agreement was made between you and Mr. Draper, you and Mr. Draper had some talk about the ram, and Mr. Draper told you that the ram had already been paid for, or to that effect?

A. No, sir; I don't know whether the ram is paid for to-day or not. Mr. Draper told me, when he settled with Kissinger, that he settled the ram with Mr. Kissinger.

Cross-Q. 289. When did Draper tell you that?

A. After the settlement between Mr. Draper and Mr. Kissinger that they had for the time that Mr. Kissinger lived on the place under money

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rent. That is the recollection I have that I talked to Mr. Hill at Baltimore.

Cross-Q. 290. When was that settlement between Mr. Draper and Mr. Kissinger?

A. I have no date for it. I wasn't by when the settlement was made. They came down to my shoe place at Marysville, and Mr. Kissinger signed some notes there. I do not know how long that was after the settlement.

Cross-Q. 291. Was it before or after Draper gave you the written power of attorney?

A. After.

Cross-Q. 292. About how long after?

A. It might have been six months, or it might be eighteen months; I can't tell how long, and I did not know when they had the settlement.

Cross-Q. 293. Did they have the settlement before, or after the power of attorney was given to you?

A. After.

Cross-Q. 294. How long after?

A. I can't tell. I know it was after. They wouldn't have come to me with the notes and told me about the settlement if I wouldn't have been his agent.

[*Last clause of answer objected to by Mr. Hill as mere inference and argument, and volunteered.*]

Cross-Q. 295. Now, at that first conversation between you and Mr. Hill, did you mention to Mr. Hill anything about that settlement between Draper and Kissinger?

A. To my recollection I did, in the way of speaking of or about the ram that he had settled with Mr. Kissinger for it.

Cross-Q. 296. Didn't you tell Mr. Hill at that time that when Draper first asked you to take charge of his farm, as his agent, he told you that the ram; had already been settled for between him and Kissinger?

A. Not when he first asked me to be his agent, or to become agent for him.

Cross-Q. 297. I am not asking you for your present recollection of what Mr. Draper told you, but I am asking as to what you told Mr. Hill at the first conversation between you and Mr. Hill about it. Didn't you tell Mr. Hill at that time that when Draper first asked you to take charge of his farm he told you that the ram had already been settled for between him and Kissinger?

[*All the conversation between Mr. Hill and the witness objected to as incompetent.*]

A. No, sir; it was after the settlement, he told me that—I told Mr. Hill.

Cross-Q. 298. Are you sure that you told Mr. Hill as you have now stated in your last answer?

A. Yes, sir.

Cross-Q. 299. Now, as a matter of fact, didn't you tell Mr. Hill at that time that as early as the fall of 1876, and about the first of October, 1876, Mr. Draper, asking you to take charge of his farm, told you that the ram had already been settled for between him and Mr. Kissinger; and when Mr. Hill proceeded to inquire if you were absolutely certain of that fact, didn't you say that you were, and would swear to it upon a stack of Bibles, or words to that effect?

A. No, sir; I don't think I ever made that expression in my life to anybody.

Cross-Q. 300. At that first conversation with Mr. Hill, did you tell Mr. Hill how many papers Mr. Storrow had received from you?

A. Not to my recollection—excepting I told him six or seven, or I might have said nine.

Cross-Q. 301. When Mr. Hill came to see you the second time, what conversation occurred between you and Mr. Hill? State it all, so far as you recollect it.

A. Well, to my recollection, Mr. Hill came and asked me whether I had got them papers, and he wanted me to go along with him to Boston. I either told him I couldn't go, or wouldn't go; that Mr. Comfort gave me satisfaction for the letter and the papers; and then he asked me for an order to go to Mr. Storrow at Boston to get a copy off of the letters. There was an order drawn up—I don't know whether it was by him or by myself—to Mr. Storrow, to let Mr. Hill have a copy of those letters and papers.

[*Complainants call on defendants to produce the order.*]

Cross-Q. 302. Please look at the paper which I now show you, and state whether that is the order to which you refer in your last answer.

A. That is my signature, but not my filling out of the order, though. To the best of my recollection that is the order that I signed at Baltimore.

Cross-Q. 303. When you expressed your willingness to give Mr. Hill the order on Mr. Storrow to see the papers and books, Mr. Hill requested you to get him paper, ink, and pen to write the order, and you got him

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those articles, and he then wrote the order, and you signed it; those are the facts, are they not?

A. To the best of my recollection they are.

Cross-Q. 304. You were then occupying a small building containing at the front end of the first floor a store-room for retailing shoes and boots, back of which room was another small room used as a shoemaker's shop; were you not?

A. Yes, sir.

Cross-Q. 305. The conversation with Mr. Hill was in the front room, or store-room, was it not?

A. Yes, sir.

Cross-Q. 306. The paper and ink which you furnished Mr. Hill were obtained by you from your desk, or counter, or shelf, were they not?

A. Off of the shelf, back of the counter.

Cross-Q. 307. Did you state to Mr. Hill at that time how many or what papers Mr. Storrow and Mr. Comfort had obtained from you?

A. I do not recollect—six or seven they got of me at one time, and if they got any more I have got no account of it or recollection.

[*Last clause of answer objected to by Mr. Hill as not responsive.*]

Cross-Q. 308. I inquired what you told Mr. Hill about it at that time.

A. I do not recollect.

Cross-Q. 309. Don't you recollect telling Mr. Hill at that time that among the papers which Mr. Storrow had obtained was a contract between Mr. Draper and Mr. Kissinger?

A. I may have told Mr. Hill so, but I have no recollection of it.

Cross-Q. 310. You have stated that at that time you signed an order on Mr. Storrow to let Mr. Hill see the papers; did you sign any other papers at the same time?

A. Not to my recollection.

Cross-Q. 311. How positive are you about that?

A. I can bring nothing to my memory, that I did. At the time that Mr. Hill was there I was worried a great deal—had lost a great deal of sleep—and didn't care, or pay much attention to anything that was said.

Cross-Q. 312. Did you tell Mr. Hill how much Mr. Storrow or Mr. Comfort had paid you for the use of your letters or papers?

A. Mr. Comfort made a visit to Baltimore between Mr. Hill's two visits and paid me twenty dollars for the use of the papers.

Cross-Q. 313. I didn't ask you what Mr. Comfort did, but whether you told Mr. Hill at that time.

A. I told Mr. Hill I received twenty dollars for the use of the papers.

Cross-Q. 314. How certain are you that you told Mr. Hill that?

A. Well, when he asked me to get him the papers I told him something to the effect that they had satisfied me for the papers; and to the best of my recollection I told him that he gave me twenty dollars, or I might have said twenty-five dollars.

Cross-Q. 315. Then, between Mr. Hill's first and second visits to you Mr. Comfort had purchased the papers from you, had he?

A. He paid me the money for the use of them until they are through with them, and then I am to have them back.

Cross-Q. 316. Up to the time of Mr. Hill's second visit to you how much money had you been paid in all for the use of these papers?

A. I got five dollars, as Mr. Comfort said for security, and afterwards twenty dollars for myself, not as security but for the use of the letters.

Cross-Q. 317. How long before Mr. Hill's second visit to you had Mr. Comfort paid you the twenty dollars for the use of the papers?

A. It might have been ten days, or it might have been twenty.

Cross-Q. 318. It was only a short time, then, was it?

A. Yes, sir; only a short time between Mr. Hill's two visits to me.

Cross-Q. 319. When Mr. Comfort visited you, between Mr. Hill's two visits, and paid you for the use of the papers, he paid you twenty dollars, did he?

A. Yes, sir; for the use of the papers.

Cross-Q. 320. He didn't pay you fifteen dollars at that time, nor twenty-five dollars at that time, did he?

A. Not for the use of the papers.

Cross-Q. 321. When Mr. Comfort visited you, between Mr. Hill's two visits, how much money did he pay you or put in your hands in all, for the use of the papers, or anything and everything else?

A. Twenty-five dollars.

Cross-Q. 322. Twenty dollars for the use of the papers, and five dollars for something else, was it?

A. Yes, sir; for time.

Cross-Q. 323. What time had you spent, and when, that Mr. Comfort then gave you the five dollars for?

A. It was on the day that Comfort was there, and the time wasn't much. It might have been an hour, and it might have been two hours.

Cross-Q. 324. You found Mr. Comfort a pretty liberal man in the use of his money, did you not?

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A. More so than some others that I have spent time with.

Cross-Q. 325. What were you doing for Mr. Comfort in the hour, or two hours, for which he paid you five dollars?

A. Talking to him; and signed an agreement that they were to have the letters—until through and then return them to me.

Cross-Q. 326. In your talk with Mr. Comfort at that time, was anything said about the other five dollars which you received as security for the papers?

A. No, sir; not to my recollection.

Cross-Q. 327. Was that payment of the twenty-five dollars, which Mr. Comfort gave you between the first and second visits of Mr. Hill, the last money which Mr. Comfort has paid you or put in your hands; or have you received money from him since?

A. I have received money from him since.

Cross-Q. 328. How much, and when?

A. I have no date for it. There was twenty-five dollars paid me—I think it was when I was here two or three weeks ago—that I was called in here, and one of the counsel not being present on account of sickness, they sent me back to Baltimore.

Cross-Q. 329. That twenty-five dollars referred to in your last answer is the only money which Mr. Storrow or Mr. Comfort have paid you or put in your hands since Mr. Hill's second visit to you last summer, is it?

A. No, sir; I was here at another time—I don't know whether it was before or after I received that twenty-five dollars—and Mr. Storrow gave me fifteen dollars and told me to go back to Baltimore, and didn't tell me what for or anything else—when he would want me he would send for me.

Cross-Q. 330. Are that twenty-five dollars and that fifteen dollars, referred to in your last two answers, the only moneys that you have received from Mr. Comfort or Mr. Storrow since Mr. Hill's second visit to you last summer?

A. No, sir; I got a five-dollar bill from Mr. Comfort not a great while ago—no date for it. I asked him for it, as I didn't have as much money as I wanted to use at that time; and Mr. Storrow gave me a five-dollar bill since then.

Cross-Q. 331. Have you now stated all the moneys which you have received from Mr. Comfort or Mr. Storrow since Mr. Hill's second visit to you last summer?

A. To the best of my recollection, that is all.

Cross-Q. 332. Then the five dollars, which Mr. Comfort at one time gave you as security for the single letter which you put in his hands, was given to you before Mr. Hill's second visit to you last summer, was it?

A. Yes, sir.

Cross-Q. 333. How long before?

A. I could not tell.

Cross-Q. 334. Was it given to you before Mr. Comfort visited you between Mr. Hill's two visits?

A. Yes, sir.

Cross-Q. 335. Was it given to you before Mr. Hill's first visit to you?

A. Yes, sir.

Cross-Q. 336. About how long before?

A. A couple of months.

Cross-Q. 337. You put the letter in Mr. Comfort's hands at the time that he gave you the five dollars as security, did you?

A. Yes, sir.

Cross-Q. 338. How long a time intervened between Mr. Hill's first and second visits to you?

A. In the neighborhood of a month or six weeks, to the best of my recollection.

Cross-Q. 339. Mr. Hill has never been to see you since the day when you gave him that written order on Mr. Storrow to see the papers, has he?

A. Not to my recollection.

[*Mr. Hill offers in evidence the written order of the witness, referred to in the last question and in question 302, and requests the Examiner to mark it "Exhibit Eppler Order;" it is as follows:*

"Baltimore, Md., June 27, 1883.

J. J. Storrow, Esq.

40 State St.

Boston, Mass.

Dear Sir:

Please permit Lysander Hill, Esq., to see and take copies of all the papers and the book which you and Mr. J. C. Comfort obtained from me during the past six months.

H. J. Eppler."]

Cross-Q. 340. You have testified, in answer 311, that at the time when you gave Mr. Hill that written order above referred to, you were "worried a great deal—had lost a great deal of sleep, and didn't care, or

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didn't pay much attention to anything that was said;" what was the cause of that worry and loss of sleep?

A. On account of my wife's sickness.

Cross-Q. 341. Was your wife sick at that time?

A. Yes, sir; and for eighteen months before that.

Cross-Q. 342. And what was the date of your wife's death?

A. The 27th of July, 1883.

Recess until 2.30, P. M.

Cross-Q. 343. In your 328th cross-answer you state, in substance, that you were here in Philadelphia two or three weeks and ago received twenty-five dollars from Mr. Comfort, and on account of one of the counsel being sick you were sent back to Baltimore. How long were you here at that time?

A. Two or three days.

Cross-Q. 344. Who paid your hotel bills when you were here that time?

A. Mr. Storrow told me to not mind the hotel bill; that he would fix that.

Cross-Q. 345. In your 329th cross-answer you state that you were here at another time, and Mr. Storrow gave you fifteen dollars and told you to go back to Baltimore. How long were you here then, and who paid your hotel bills?

A. About the same as before—two or three days. I don't know as there was anything said about the hotel matter—only once—not to my recollection.

Cross-Q. 346. And on that last-mentioned occasion, when you were here and Mr. Storrow gave you the fifteen dollars; I suppose you left your hotel bill for him to pay, did you?

A. Yes, sir; I didn't pay it.

Cross-Q. 347. How long have you been here on this present trip?

A. One week yesterday.

Cross-Q. 348. On all your trips here for the Bell Telephone Company you have boarded here at the Lafayette Hotel, where Mr. Storrow and Mr. Comfort have their quarters, I suppose, have you?

A. Yes, sir.

Cross-Q. 349. When were you last at Marysville?

A. Yesterday a week ago was the last time I was there.

Cross-Q. 350. How happened you to go up there then?

A. I went up there to attend to some business of my own there.

Cross-Q. 351. What business, and with whom?

A. To repair fences, remove the water-closet in the yard from one place to another, and to do some fishing.

Cross-Q. 352. How long were you there at that time?

A. About nine days.

Cross-Q. 353. I suppose you didn't take that opportunity to talk with anybody up there about Draper's ram, did you?

A. I might have spoke to some person about it. The ram and telephones is about all that is talked of up there now.

Cross Q. 354. Whom did you speak to about the ram while up there on that visit? Mention everybody that you spoke to about it.

A. I spoke to Mr. Theo. Fenn going up in the train—not at Marysville, but close to Marysville—going up in the train. He told me about—that the ram was put in when he was farming for his father.

[Mr. Hill objects to the last clause as not responsive, and volunteered, and requests the witness to confine his answers to the questions.]

A. I don't see how I can answer that question, except I tell what the talk was. I don't see how. After he was through talking I told him that the ram was put in in 1878.

[Mr. Hill again objects to the witness insisting upon forcing upon the record things that have not been inquired about, and which he has been distinctly told are not involved in the question. The question calls only for the names of the persons to whom the witness spoke about the ram on that visit.]

A. I rather think I talked to my brother about it—Simon G. Eppler—but I wouldn't say for certain; I talked to a man by the name of Stevens; he is from Harrisburg, I believe; I don't recollect of any others.

Cross-Q. 355. When you got through with that visit did you come from Marysville here?

A. Yes, sir; I came right to Harrisburg, and from there down here.

Cross-Q. 356. Did Simon G. Eppler come here with you?

A. Yes, sir.

Cross-Q. 357. For what purpose did he come down here?

A. He came to me at Marysville, in front of the boarding-house, and told me that himself and me was to come to Philadelphia.

Cross-Q. 358. And both on the same business, I suppose.

A. Yes, sir.

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Cross-Q. 359. But you don't know whether you talked with him or not about the ram?

A. We spoke about the timbers being cut, and I rather think that I mentioned the ram at that time.

Cross-Q. 360. How long did you stop at Harrisburg on your way down?

A. Somewhere about three hours.

Cross-Q. 361. What did you stop there for?

A. I came down on the morning train and attended to some matters there—money matters of my own—and then took the 11.50 train and came to Philadelphia—I believe it was 11.50.

Cross-Q. 362. With whom did you have any money matters at Harrisburg that day?

A. Mr. Maglaughlin, on Walnut street, who keeps a boarding-house.

Cross-Q. 363. How many times have you been at Marysville since the first of January, 1884?

A. Four or five times.

Cross-Q. 364. What business has taken you there four or five times in such a short period?

A. One time I went up to settle up with my brother for the rent and what business he had done for me; another time I went there to attend a funeral, at Harrisburg, of my wife's sister; another time I went up there—my son-in-law sold his hotel there, and I went up with him to go to Bloomfield to see that the papers was all right. I believe that is all I can recollect of being up.

Cross-Q. 365. What time was your wife's funeral?

A. I think it was on the 7th day of January, 1884.

Cross-Q. 366. You met Mr. Storrow and James Zimmerman at Harrisburg on one occasion and went with Mr. Zimmerman to Marysville, did you not?

A. I don't recollect of meeting Mr. Storrow. I met Mr. Zimmerman at one time, but I don't recollect whether it was on the train or not, or whether it was after I was off of the train.

Cross-Q. 367. When you were at Marysville about the 7th of January, did you talk to anybody about Draper's ram, or anything connected with it? If so, give the names of all the persons whom you talked to at that time.

A. No person that I can recollect of. I got there late in the afternoon, and left on the early train in the morning to attend the funeral at Harrisburg.

Cross-Q. 368. The time when you met Mr. Storrow at Harrisburg and went with Mr. Zimmerman to Marysville was the 31st of January, was it not?

A. I have no date for it when I saw Mr. Zimmerman. I know it was some time in cold weather.

Cross-Q. 369. What was your business up there when you met Mr. Storrow at Harrisburg, and went from there with Mr. Zimmerman to Marysville?

A. To settle up with my brother. To the best of my recollection, that was all at that time.

Cross-Q. 370. Did you meet Mr. Storrow at the Bolton House?

A. Yes, sir; I went there to see him.

Cross-Q. 371. Did you go there on your way from Baltimore to Marysville?

A. I think I had been at Marysville and was down on some business or other—I can't tell—to Harrisburg, and, perhaps, I was on my way to Baltimore. I cannot tell.

Cross-Q. 372. After seeing Mr. Storrow, did you go back to Marysville?

A. I do not recollect.

Cross-Q. 373. Do you recollect whether you met Mr. Storrow at that time at his request or by appointment?

A. I met Mr. Comfort, and he told me to come around to the Bolton House and see Mr. Storrow.

Cross-Q. 374. Did you see Mr. Comfort at Marysville during that visit there?

A. I don't recollect where I met Mr. Comfort—whether on the train, or at Marysville, or at Harrisburg.

Cross-Q. 375. At the time you were at Marysville to settle with your brother, how long were you at Marysville, from the time you arrived there from Baltimore until you left there for Baltimore?

A. Perhaps three days.

Cross-Q. 376. Mention the names of all the persons to whom you talked on that visit about Mr. Draper's ram, or anything connected with it.

A. I don't know of any person, except it would have been Zimmerman, on that trip.

Cross-Q. 377. Didn't you, on that trip, go around and talk to a number of persons on the subject referred to in my last question?

A. Not to my knowledge.

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Cross-Q. 378. You were at Marysville again shortly after that trip and some time in the month of February, were you not?

A. I can't recollect whether I was or not; I have been up there frequently, calculating to make my home there.

Cross-Q. 379. You have referred to your trip up there to settle with your brother; what was your next trip after that for?

A. I have been up there different times, and I cannot tell what I was up there for at that trip.

Cross-Q. 380. Can you tell the names of all the persons to whom you talked on that trip about Draper's ram, or matters connected with it?

A. I do not recollect of any person.

Cross-Q. 381. You called on James Zimmerman both on that trip and the trip previous, did you not?

A. I have seen James Zimmerman but once in two years, and then when he spoke to me I didn't know who he was till I asked him; that is my recollection of the visit.

Cross-Q. 382. You were again at Marysville on or about the 26th of March, 1884, were you not?

A. Somewhere about there; it was when I went up there to go to Bloomfield to settle up that hotel matter.

Cross-Q. 383. How long were you at Marysville on that trip?

A. About four days.

Cross-Q. 384. Did you talk to anybody on that trip about Draper's ram, or matters connected therewith?

A. I might have, but I can't bring anybody to my recollection.

Cross-Q. 385. When were you next at Marysville after that trip?

A. I went up there some time in April—I don't know—maybe the 10th, or along there.

Cross-Q. 386. What were you up there for then, and how long did you stay?

A. I went up there to go fishing, and I think I stayed in the neighborhood of five or six days, or maybe not that long. The railroad company paid off, and I went to Baltimore to try and collect in some money that was due me.

Cross-Q. 387. Did you talk to anybody on that trip to Marysville about Draper's ram, or associated matters?

A. I think I talked to John Peffley when him and I was out on the river. I am not certain whether the ram was mentioned or not.

Cross-Q. 388. Anybody else?

A. Not to my recollection.

Cross-Q. 389. When were you next at Marysville after that trip?

A. About two weeks ago, or something like that.

Cross-Q. 390. From your testimony as to all these visits to Marysville, I should infer that on none of the trips did you ever go to anybody's house for the purpose of consulting about the evidence in this case, or meet anybody there for that purpose. Is my inference correct, or not?

A. I never went to anybody's house, nor never went there to meet anybody concerning the ram matter at all.

Cross-Q. 391. When and where did you first meet Mr. James W. Brooks, who is here present on behalf of the Bell Telephone Company?

A. Here at the hotel, in his room, on the visit about three or four weeks ago when I was called here.

Cross-Q. 392. Did you ever meet Mr. Brooks at Marysville?

A. Yes, sir; but not by appointment.

Cross-Q. 393. Where did you meet him at Marysville?

A. I think it was opposite the depot, to the best of my knowledge.

Cross-Q. 394. When was that?

A. I guess it was about ten days ago.

Cross-Q. 395. Did you ever meet Mr. Brooks at Marysville more than ten days ago?

A. He told me that he saw me getting on the train one day, and said he seen that I didn't recognize him or notice who he was, or something to that effect. We didn't speak to each other—not at that time.

Cross-Q. 396. Were you not at Mr. J. W. Beers' house, at Marysville, on the 26th day of March, 1884?

A. I went there to see Squire Fenn, to fill out a deed from John L. Stone to a man by the name of Miller. I spoke to Mrs. Beers and asked how their family was. This was out in the yard; I wasn't in the house, or called to see Mr. Beers either.

Cross-Q. 397. Referring to the time when you met Mr. Storrow at the Bolton House in January, 1884, please refresh your recollection, and state whether you don't remember of traveling from Harrisburg to Marysville at that time with Mr. James Zimmerman.

A. I could not tell whether he was in the train or out of the train. I know he was talking to me somewhere, on one of my trips up there, and I asked him whether he wasn't Mr. Zimmerman, and he answered yes.

Cross-Q. 398. Where was it that you asked him that question?

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A. I cannot bring it to recollection.

Cross-Q. 399. Were you not with him at the railroad station at Harrisburg on that occasion, and did you not do some pretty loud and emphatic talking about the date of the putting in of Draper's ram, at the time?

A. I don't mind meeting him at the depot at Harrisburg. He told me that he knew when he fetched the ram up; and he talked a great deal more, but I don't know what was said by him to me. And I made the remark that the—well, I don't know that I said ram—but I said it was put in in 1878. He said ram pretty often.

Cross-Q. 400. You left the station at Harrisburg that evening about ten o'clock to go on the train, did you not?

A. Not to my recollection. I only know of going on that ten o'clock train but once since the first of January, and that was, as near as I can tell you, about four or five weeks ago, or along there.

Cross-Q. 401. Have you no recollection of going up on that ten o'clock evening train from Harrisburg to Marysville last winter, and, just as the passengers were boarding the train, of talking and swearing in loud and emphatic tones about the date when Draper's ram was put in?

A. Not to my recollection.

Cross-Q. 402. Do you swear that such an occurrence did not take place, and in the presence of a considerable number of persons?

[*Objected to as incompetent.*]

A. I cannot bring it to my recollection.

[*Question repeated.*]

Objection repeated and question further objected to, unless the question be made more particularly specific as to persons and circumstances.]

A. Well, it did not to my recollection.

Cross-Q. 403. That is the best answer you can give to the question, is it?

[*Question objected to, as the answer is the best that can be required.*]

A. Yes, sir.

Cross-Q. 404. I will mention to you some of the persons who are said to have been present on the occasion I refer to: namely, James C. Zimmerman, J. Harper Seidel, Squire W. K. Fenn, who is here present, E. B. Leiby, George W. Hayes; the occasion being on or about the last day of January, 1884, at the railroad station at Harrisburg, at the departure of the evening train for Marysville at about ten o'clock in the evening. At that time and place, and in the presence of those gentlemen, or any of

them, were you not talking and swearing, in a loud and emphatic manner, about the time when Draper's ram was put in?

A. No, sir; not to my recollection.

Cross-Q. 405. Do you swear positively that the occurrence did not take place at that time and place?

A. Not at that hour of the night.

Cross-Q. 406. At what hour did it take place?

A. All I can say is that I didn't go up on that train in January, at ten o'clock at night.

Cross-Q. 407. Do you swear positively that such an occurrence did not take place at any time last winter at the railroad station at Harrisburg, and in the presence of the gentlemen whom I mentioned in my 404th question, or any of them?

A. I will positively say that I know nothing of the occurrence.

Cross-Q. 408. But you won't positively say that the occurrence did not take place; is that it?

A. I will say, no, sir; it did not take place.

Cross-Q. 409. Referring now again to the two visits which Mr. Hill made to you at Baltimore last summer; among the papers which you mentioned to Mr. Hill at that time as having been taken by Mr. Storrow, one was a contract between Mr. Kissinger and Mr. Draper, was it not?

A. I think I did mention something about it—about the agreement or contract.

Cross-Q. 410. Did the contract contain any reference to the ram?

[*Question objected to because the contract is the only proper evidence of its contents.*]

A. No, sir; not to my recollection.

Cross-Q. 411. That was the contract which was put in evidence in your direct examination between the 19th and 20th interrogatories, was it not?

A. Yes, sir; that is the one.

Cross-Q. 412. Did you tell Mr. Hill at his said visits anything about the date of that contract, or the contents of it?

[*The objection to cross-question 297 is renewed, to apply to all questions upon the subject; and the question is further objected to because the statements of the witness, whenever made, as to the contents of the paper which was not in his possession at the time, which he took steps to allow the defen-*

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dants' counsel to inspect, which they in consequence of those steps did inspect, and which has been put into the case, are neither competent nor material.]

A. I don't recollect that I did.

Recess until 7.30, P. M.

Cross-Q. 413. Didn't you state to Mr. Hill, at that time, that that contract was dated not later than April 1, 1877, and that it contained a clause to the effect that Mr. Kissinger was to keep the ram in repair?

[Same objection.]

A. Not to my recollection.

Cross-Q. 414. Do you swear that you didn't make such a statement to Mr. Hill at that time?

[Same objection.]

A. Yes, sir; to the best of my knowledge. I cannot tell at the present time that there is anything of that kind in the agreement now—to keep the ram in repair.

Cross-Q. 415. Is your memory of what was in the agreement any better now than it was then?

[Same objection.]

A. No, sir.

Cross-Q. 416. Did you ever have the impression on your mind that there was a clause in that agreement to the effect that Mr. Kissinger was to keep the ram in repair?

[Same objection.]

A. No, sir.

Cross-Q. 417. You are sure about that, are you?

[Same objection.]

A. Yes, sir.

Cross-Q. 418. Did you ever have the impression on your mind that that agreement was dated not later than April 1, 1877?

[Same objection.]

A. No, sir.

Cross-Q. 419. You are sure about that, are you?

[Same objection.]

A. Yes, sir.

Cross-Q. 420. Did you ever have the impression on your mind that that agreement was dated sometime in January, 1877?

[*Same objection.*]

A. No, sir.

Cross-Q. 421. You always remembered that that agreement was dated in December, 1877, did you?

[*Same objection.*]

A. No, sir; I don't know whether that is the date of it or not.

Cross-Q. 422. How often was Mr. Draper in the habit of coming to Marysville in the year 1877?

A. I think he was there twice—once in the beginning of the year, and next in the fall

Cross-Q. 423. About what time in the beginning of the year was he there?

A. February or March, or along there somewhere, to the best of my knowledge; I have got no date for it.

Cross-Q. 424. Wasn't he there on the 7th day of February, 1877?

A. I can't set the date.

Cross-Q. 425. At what time in the latter part of the year 1877 was he there?

A. In November.

Cross-Q. 426. How long did he stay?

A. I suppose, six or eight days, or along there, as near as I can come at it.

Cross-Q. 427. Who was with him on that visit?

A. Mrs. Draper, his wife.

Cross-Q. 428. How long did she stay there?

A. I reckon the same time he did. I don't know whether she went along home with him at the same time he went home, or not.

Cross-Q. 429. Do you know when this agreement of December 4th, 1877, was written, or where?

A. No, sir.

Cross-Q. 430. Where did you first see it?

A. I got it by mail in the post-office.

Cross-Q. 431. Were you present at any of the conferences between Mr. Draper and Mr. Kissinger in November, 1877, about making a new agreement in regard to the rents and so forth?

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A. They were there several evenings, but I don't know as there was anything said there about making a new agreement or not.

Cross-Q. 432. You don't remember any talk, then, about the terms of the new agreement which they purposed to make?

A. All that I recollect is that Kissinger told me he couldn't stand paying the money-rent. Mr. Kissinger and Mr. Draper generally talked by themselves when they were in there. I had my business to attend to, and didn't pay much attention to their talking, excepting when they called my attention to it.

Cross-Q. 433. When did you first know anything of the intention of Mr. Draper or Mr. Kissinger to put a ram in on the premises?

A. The time Mr. Draper was there in November, 1877.

Cross-Q. 434. You never had heard anything about it before that time, had you?

A. Not from Mr. Draper; either Mr. Kissinger or some one told me that they were going to run the water up, or carry the water up in some manner, but the word ram I don't think was mentioned.

Cross-Q. 435. Then, the first you either heard or knew that they were going to put in a ram was in November, 1877, was it?

A. Yes, sir; Mr. Draper and Mr. Kissinger stopped there and said they were going over to order a ram to carry the water up to the house.

Cross-Q. 436. Has your recollection that that occurred in November, 1877, always been as clear and as positive as it is now?

A. Yes, sir.

Cross-Q. 437. And has your recollection that the first that you ever heard or knew of their intention to put in a ram was in November, 1877, always been as clear and as positive as it is now?

A. Yes, sir; that is the first I heard the mention of the word ram to my recollection.

Cross-Q. 438. And that has always been your recollection, has it?

A. Yes, sir.

Cross-Q. 439. You say that the first that you ever heard or knew of their intending to put in a ram there was in November, 1877, and that such has always been your recollection. When Mr. Hill visited you last summer, did you make a statement to him inconsistent with those facts?

[*Same objection as to cross-question 297.*]

A. Not that I recollect of.

Adjourned until May 17, 1884, at 10, A. M.

MAY 17, 1884, 10.30, A. M.

Examination resumed.

Present, same counsel, except Mr. Church.

Cross-examination of Herman J. Eppler, by Mr. Hill, continued:

Cross-Q. 440. You have stated several times very positively that the first you ever heard or knew of Draper's and Kissinger's intention to put in a ram was in November, 1877, and that such has always been your recollection. Have you always, of your unaided memory, and without reference to any papers or written memoranda, recollected that that was in November, 1877?

A. Yes, sir; all but—Kissinger said something about carrying or throwing water up to the house with some instrument, but he didn't say ram.

Cross-Q. 441. And without any reference to any papers or memoranda, you have always clearly remembered that the visit of Draper and wife to Kissinger was in November, 1877, and that that was the occasion when you first knew or heard anything about their intention to put in a ram on the farm, if I understand you. Is my understanding correct?

A. Well, I must take the date from reference to the date when Mrs. Draper got the shoes, when she was there with him at the farm.

Cross-Q. 442. And do you mean that you didn't remember that it was in November, 1877, that you first heard or knew of their intention to put in a ram, except by reference to the charge for the shoes, and that you couldn't have fixed the month of November, 1877, without referring to the charge for the shoes?

A. I don't know as I could have set the month. I knew it was the first year that I had a power of attorney to act for Mr. Draper. I didn't see Mr. Draper after I got the papers until that visit in November.

Cross-Q. 443. And did you always remember that the power of attorney was given you in the spring of 1877, and that the visit of Draper and wife occurred in the following fall?

A. Yes, sir.

Cross-Q. 444. Then, if I understand you, you always had a clear recollection that the visit of Draper and wife occurred in the fall of 1877, and that your first knowledge of their intention to put in a ram was obtained during that visit of Draper and wife; am I correct?

A. Yes, sir.

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Cross-Q. 445. And you always clearly remembered those facts without reference to any papers, but merely from your own memory, did you?

A. No, sir; I go by reference to the papers for the dates.

Cross-Q. 446. But you have testified that you remembered, and always remembered, that the power of attorney was given you in the spring of 1877; do you mean now to change that statement, and to say that you did not remember that fact without reference to the paper?

A. I didn't understand the question—without reference to the paper—in that way.

Cross-Q. 447. In the 440th cross-question you were asked, in substance, if you had always, of your unaided memory, and without reference to any papers or written memoranda, recollected that the first you ever heard or knew of Draper's or Kissinger's intention to put in a ram was in November, 1877, to which question you answered "Yes, sir;" was that answer true or untrue?

A. I didn't understand the question—without reference to the papers.

Cross-Q. 448. When did you refer to the papers to ascertain the time when you received the power-of-attorney, the time when the contract between Draper and Kissinger was made, and the time when Mrs. Draper got the shoes?

A. Well, at different times.

Cross-Q. 449. When first?

A. I can't recollect.

Cross-Q. 450. Was it before Mr. Storrow got the papers from you?

A. Yes, sir; and afterwards.

Cross-Q. 451. When Mr. Hill visited you last summer, did you know that the power-of-attorney was given you in the spring of 1877?

A. Well, I knew I took charge of the place in 1877, and that is the spring that I got the papers.

Cross-Q. 452. You knew that as well then as now, did you?

A. Yes; I knew I had the paper—knew that I was acting agent for him.

Cross-Q. 453. And you knew as well then as now that you got that paper in the early part of 1877, did you?

A. I knew that the date of it was 1877, and that is what I go by—the date.

Cross-Q. 454. Was it your memory then, as now, that the visit of Draper and wife was in the fall of 1877?

A. By the date that I have in my book, or on the foolscap, it was the same.

Cross-Q. 455. I want to find out what you know from memory; you have testified several times to the effect that you always clearly remembered that your first knowledge of Draper's and Kissinger's intention to put in a ram was obtained in the fall of 1877; I want to know whether that statement is true or not, and whether you are now going to take it back and swear to something different.

[Objected to as an attempt to create an appearance of a contradiction which does not exist.

Objection objected to as improper and intentionally leading and instructing.

Question also objected to as misleading.]

A. I did not understand the question—without reference to the papers.

Cross-Q. 456. Then you did not always remember clearly that your first knowledge of their intention to put in a ram was obtained in the fall of 1877, but always had to refer to the papers to ascertain the time; is that what you mean to swear to now?

A. I have said that I got the power of attorney in 1877, in the spring, and from that, the time Mr. Draper and Mrs. Draper came to the farm, and Mr. Draper got the shoes for Mrs. Draper—in November, as charged in the book, or on the foolscap.

[Question repeated.]

A. I said it was after I got the power of attorney—the first I knew that they were going to get it.

[Question repeated again.]

A. My memory is, that I got the papers the spring of 1877, and I infer from that that it was the following fall—the first that I was told that they were going to put in a ram.

Cross-Q. 457. You say your memory is that you got the papers in the spring of 1877; what papers?

A. I said paper, meaning the power of attorney.

Cross-Q. 458. Now, what I want to find out is this: Did you have to refer to the power of attorney in order to remember that you got it in the spring of 1877, or did you always remember that it was in the spring of 1877, without the necessity of referring to the paper to refresh your recollection?

[Question objected to as ambiguous and unmeaning, the word "always" being too vague.]

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A. I know the paper is dated in 1877, and I know it was between that time and the time Mr. Draper got the shoes, and the time they started home; otherwise I can't get at it.

Cross-Q. 459. You have testified, in answer to cross-question 456, that your memory is that you got the power of attorney in the spring of 1877; do you remember that fact without referring to the power of attorney to refresh your memory?

A. I refer to the date—to the paper.

Cross-Q. 460. Then, if you hadn't had the paper here to refresh your memory, you couldn't have testified whether you got the power of attorney in the spring of 1877, or at some other time; is that so?

[*Objected to as ambiguous.*]

A. I might have not just knew that I got it in the spring, if I hadn't the date to go by.

Cross Q. 461. Then, when you testified, in cross-answer 443, that you always remembered that the power of attorney was given you in the spring of 1877, you didn't testify to what was true; did you?

[*Same objection, as to cross-questions 455 and 458.*]

A. The reference to the paper or power of attorney, is what I go by.

Cross-Q. 462. Anybody can tell, by reference to the power of attorney, that it is dated in the spring of 1877. I want to see whether you have any memory independent of these papers; and if so, what it is good for. And now I ask you again, whether you do, or do not remember, as a matter of fact, of your own memory, that that power of attorney was sent to you in the spring of 1877?

[*Question objected to as a mere attempt to badger the witness by a metaphysical discussion, the solution of which, if possible, can afford no aid to the court in considering the value of this deposition.*]

A. It certainly is dated 1877, and I generally go by that if I have no date. I would know, then, anyhow, that it was in 1877, the same as I do with the date; but I might not know it was in the spring.

Cross-Q. 463. Then you couldn't have sworn whether the paper was sent to you in the spring, or the fall of 1877, if you hadn't had the paper to fix the date; is that the fact?

[*Same objection.*]

A. Well, I knew when I took the agency for him—to act as agent.

[*Question repeated.*]

[*Same objection.*]

A. I could have known by the time I took charge of the place.

Cross-Q. 464. What could you have known by the time you took charge of the place?

[*Same objection.*]

A. That I got the papers in 1877.

Cross-Q. 465. Question 463 repeated.

[*Same objection.*]

A. I couldn't set no certain time without the paper.

Cross-Q. 466. How long did you receive the power of attorney from Mr. Draper after you took charge of the farm?

A. I received the paper before I took charge of the farm.

Cross-Q. 467. Have you always remembered that fact clearly and positively?

A. Yes, sir; by receiving the paper by mail—the power of attorney—and not taking charge of the farm until April, 1877.

Cross-Q. 468. Then you remember, of your own memory and without reference to the paper, that you took charge of the farm in April, 1877, do you?

[*Same objection.*]

A. No, sir; by reference to the paper.

Cross-Q. 469. Without reference to the paper, then, you couldn't have sworn whether you took charge of the farm in the spring or fall of 1877; is that so?

[*Same objection.*]

A. Well, I would have knew when I took charge of it—whether it was spring or fall.

Cross-Q. 470. We seem, at last, to have got at something that you know of your own memory, without reference to the paper. You say that you would have known whether you took charge of the farm in the spring, or fall of 1877. Now tell us whether you would have known that it was in the spring, or the fall?

[*Same objection.*]

A. Well, if I had took charge of it in the spring, I judge I would have known it was in the spring.

[*Question repeated, and a direct answer requested.*]

[*Same objection, and because the question has already been twice answered.*]

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A. Well, I took charge of it in the spring—now, with reference to the paper, or outside. I didn't act without papers. I don't know what my memory would have been—that I took the place—without a date, at the same time having a date to go by.

Cross-Q. 471. In answer 469 you testify that without reference to the paper you would have known whether it was spring, or fall when you took charge of the farm. That answer was true, I suppose, was it not?

A. Well, if I had took it in the spring I should have known that it was in the spring without reference—without any papers to go by.

Cross-Q. 472. As a matter of fact, you did take charge of the farm in the spring, did you not?

A. Yes, sir; I got the power of attorney and then took charge of it April 1, 1877.

Cross-Q. 473. The written contract or agreement by which the rent was changed from a money-rent to a produce-rent, or rent in kind, was not made until a long time after you took charge of the farm, was it? I mean the contract which was put in evidence in your examination-in-chief, marked "Draper-Kissinger Lease on Shares, December 4, 1877."

[*Objected to as ambiguous.*]

A. It took effect in the spring of 1878—April; it took effect one year after I became agent for Mr. Draper; I judge it was written at the time it is dated; I wasn't by when it was written; I received it by mail.

Cross-Q. 474. You received it by mail from Mr. Draper and got Mr. Kissinger to sign it, did you not?

A. Yes, sir; and secured G. W. Eppley to witness it.

Cross-Q. 475. That was when you were acting as agent and in charge of the farm, was it?

A. Yes, sir.

Recess until 2.30, P. M.

Cross-Q. 476. I suppose you remember, of your own memory, without reference to any papers, that you received the paper, "Draper-Kissinger Lease on Shares," quite a considerable time after you took charge of the farm as agent, do you not?

[*Objected to as indefinite and ambiguous.*]

A. I can't answer that question no other way but by the dates of the papers. The papers has got the dates, and the date is in my mind as 1877. That is what my recollection is of the papers.

Cross-Q. 477. From your own memory, then, without reference to the dates of the papers to refresh it, you couldn't tell whether you got that lease from Draper a long, or a short time after your took charge of the farm, could you?

[*Same objection as to cross-question 462.*]

A. I must have reference to the papers—on account of that I know the dates.

Cross-Q. 478. How long have you known the dates?

A. I seen the dates when I got the papers. I saw them when I gave them to Mr. Storrow, and I saw them again since I am here. He handed them to me yesterday or the day before.

Cross-Q. 479. Did you know the date of that lease all day yesterday?

[*Same objection.*]

A. After I saw it.

Cross-Q. 480. Did you know the date of that lease yesterday morning when you began to testify?

[*Same objection.*]

A. I knew it was 1877.

Cross-Q. 481. What is the date of the lease? Please answer from your own memory.

[*Same objection, and further that it is not competent to ask the question, the paper being in evidence.*]

Respondents' counsel says that he asks the question in order to test the witness' memory and the accuracy of his statements just made on oath.

Complainants' counsel replies that the course of examination pursued is precisely that which perfectly well-settled principles of the law of evidence forbid.]

A. It is dated 1877, December. I take it from seeing it on the lease.

Cross-Q. 482. Yesterday morning, when you began to testify, did you know that the lease was dated December, 1877?

[*Same objections.*]

A. Well, I must have known it. I have seen it often enough. It was in my possession all the time I was acting agent for Mr. Draper, from the date of the lease.

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Cross-Q. 483. You couldn't have been ignorant yesterday that that paper was dated in December, 1877, could you?

[*Same objections.*]

A. Well, I don't know as I was asked the question yesterday. I perhaps didn't have my mind on the date.

Cross-Q. 484. But you knew the date, if you had been asked the question; is that the fact?

[*Same objections.*]

A. Well, I knew the date before, and I know it now; so I think that I would have knowed it yesterday if I had been asked the question.

Cross-Q. 485. As a matter of fact you testified last evening with reference to that paper, as follows:

"*Cross-Q. 421.* You always remembered that that agreement was dated in December, 1877, did you?"

A. No, sir; I don't know whether that is the date of it or not."

How do you explain such testimony as that, given so late as last evening, in view of the testimony you have given here this afternoon?

[*Same objection, and also same objection as to said question 421.*]

A. I understood the question last evening that the date was December the 4th, 1877, and I answered "No, sir."

Cross-Q. 486. You clearly recollect understanding that question in that way, do you?

A. Yes, sir.

Cross-Q. 487. In cross-answer 478 you stated that you saw the dates when you gave the papers to Mr. Storrow; that was at Marysville, and some time before Mr. Hill visited you, was it not?

[*Question objected to as ambiguous and misleading.*]

A. Yes, sir.

Cross-Q. 488. You noticed then that the contract or lease was dated in December, 1877, did you?

[*Same objection.*]

A. Well, I seen, at various times, that it was dated at that time—1877. By my best recollection I must have seen it when I turned the paper over to Mr. Storrow or Mr. Comfort—whichever got it.

Cross-Q. 489. From that time to this you have known that that lease was dated in the latter part of 1877, have you?

[*Same objection.*]

A. Yes, sir; and from the time I got the lease.

Cross-Q. 490. And did you always remember that that lease was received by you, and signed by Mr. Kissinger, after the visit of Draper and his wife to Kissinger, in the fall of 1877?

[*Same objection, and as immaterial.*]

A. Well, the date is after his visit. So by that I must have remembered that it was after they made the visit to Marysville to the farm.

Cross-Q. 491. And the only way you had of knowing that it was after the visit of Draper and wife was by referring to the lease to see the date; is that what you mean to say?

[*Same objection.*]

A. It is not likely I got it before the date of it. I can't answer that question no other way.

Cross-Q. 492. That is no answer at all, but I will put the question in another way. Have you had to refer to the lease, and look at the date of it, in order to determine that the lease was received by you after the visit of Mr. and Mrs. Draper to Kissinger's in the fall of 1877?

[*Same objection.*]

A. Well, Mr. Draper and his wife was there in November, and I got the lease in December. I don't know as I had to refer to the lease at all to see that I got it after he was there, when he was there in November, 1877, and I got the lease in December, 1877.

Cross-Q. 493. Have you any distinct memory of your own, that the lease was received by you from Draper after the visit of Draper and wife to Kissinger's in November, 1877, or do you have to rely upon the papers to fix that fact?

[*Same objection.*]

A. Well, the papers have got the date, and I have got the date in my mind, and I have got to go by that.

Cross-Q. 494. You can answer that question if you will, and I repeat it, and demand an answer to it.

[*Same objection, and further, that the witness has repeatedly and fully expressed the condition of his mind and recollection on the subject, and the subject is exhausted.*]

A. I go by the date of the paper. I have the date on my mind. If the papers had no date, then I would have to make up my mind in a different way when it was.

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Cross-Q. 495. If the lease had no date, would your own memory inform you that you received it from Draper after the visit of Draper and wife to Kissinger's in the fall of 1877?

[*Same objection.*]

A. I would have to have the experience of it first. I can't answer that question in no other way.

Cross-Q. 496. I now again ask you whether you remember, of your own memory and without reference to any papers, that you received the lease from Draper a considerable time after you took charge of the farm as agent?

[*Same objection.*]

A. Well, I have got the papers and the dates on my mind, and I answer the question from them dates.

Cross-Q. 497. You know now that you did receive the lease from Draper some eight months or more after you took charge of the farm, do you?

[*Same objection.*]

A. By the dates on the paper.

Cross-Q. 498. Did you know that such was the fact, at the time when Mr. Hill visited you last summer?

[*Same objection.*]

A. By the dates of the papers I knew it.

Cross-Q. 499. Mr. Storrow had the papers at the time, had he not?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 500. In the absence of the papers at that time, did you know that the lease was recieved by you some eight months after you took charge of the farm?

[*Same objection.*]

A. I knew that the lease was dated 1877.

Cross-Q. 501. I suppose you knew also that it was dated in December, 1877, as you had seen the date at the time when the papers were handed to Mr. Storrow?

[*Same objection.*]

A. Well, I saw the date, December, 1877, when I gave him the papers.

Cross-Q. 502. And when Mr. Hill visited you a while afterwards you knew that the lease was dated December, 1877, did you?

[*Same objection.*]

A. I don't know as I was asked that question by Mr. Hill the time he was there.

Cross-Q. 503. If Mr. Hill, when he was there to see you, had asked you when the lease was dated, what would you have told him, in substance?

[*Same objection.*]

A. I don't know what answer I would have given then. I expect I would have told him it was 1877. I should have known that I had no papers of 1876 with dates concerning the lease, nor no papers of 1876 of power of attorney. I got them papers in 1877, and acted under them as Draper's agent till the latter part of January, or beginning of March, 1882. So, by that, I answer all them questions, that the papers were received and dated 1877.

Cross-Q. 504. Please look at the paper which I now show you, dated "Baltimore, Md., June 27th, '83," and signed "H. J. Eppler," and state in whose handwriting the signature is.

[*Paper objected to as incompetent, for the reason that it purports to state the contents of a written paper, which was not then shown to the witness nor in his possession, which he had then taken steps to enable the defendants' counsel to see which defendants' counsel in pursuance of said steps and by means of them did see, a few days afterwards, and which was put in evidence on the direct examination of this witness; and further, that it is not competent to use said paper after the witness has been cross-examined for two days on the subject before it was shown to him.*]

[*Respondents' counsel states that the paper is not used for the purpose of proving the contents of the lease, but for the purpose of illustrating the character of the witness' testimony, and showing the utter unreliability of his memory and his statements.*]

A. The signature is my writing.

[*Said paper is offered in evidence as "Exhibit Eppler-Hill Statement," and is as follows:*

"Baltimore, Md., June 27, '83.

In the written agreement between Thos. Draper and Geo. W. Kissinger, dated not later than April 1, 1877, as I remember it, there was a clause to the effect that s'd Kissinger was to keep the ram in repair. The said paper is now in custody of J. J. Storrow, Esq.

H. J. EPPLER."

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Respondents' counsel, Mr. Hill, states that the body of the paper is in his own handwriting.

Cross-Q. 505. With your memory refreshed by the paper which I have just put in evidence, what is your recollection now as to the number of papers which you signed at Mr. Hill's second visit to you?

[Same objection.]

A. Well, I signed that paper there, that I looked at—that order for the copies—I had no recollection of this [Eppler-Hill Statement] any more. As I said before, my mind was bothered by loss of sleep a great deal—sick wife—and I didn't pay much attention or care what was said.

Cross-Q. 506. Do you mean to have us understand that you were ready then to make and sign any kind of a statement of facts without regard to its truth?

[Same objection.]

A. No, sir; I won't say that. That April first is a mistake, because I knew better—that that agreement was not dated April first. I wrote to Mr. Storrow before he got the agreement that it was signed in 1877, in December. I never made such a statement, whether Mr. Hill wrote it or not.

Cross-Q. 507. Do you mean to say that you never made the statements in this paper, "Exhibit Eppler-Hill Statement," or that you made a mistake in giving the date to Mr. Hill?

[Same objection.]

A. Well, myself or Mr. Hill made the mistake, because I knew the paper was dated in 1877, in December, as I wrote to Mr. Storrow before he received it.

Cross-Q. 508. Your memory seems to have wonderfully freshened up within the last few minutes, if I can judge by your 503d cross-answer. Are you now positive that you would have told Mr. Hill that the lease was dated in December, 1877, if he had asked you the date of the lease?

A. Well, I didn't say April the first; I knew better.

Cross-Q. 509. Neither does "Exhibit Eppler-Hill Statement" say that the lease was dated April 1st, but only that it was dated not later than April 1st, 1877, as you then remembered it. Did you not make that statement to Mr. Hill?

[Same objection.]

A. No, sir; I said nothing about April 1st, or later than that, as near as I remember, because I knew it was in December.

Cross-Q. 510. When you testify that you said nothing about April 1st, or later than that, do you testify to that from your memory of what you did say to Mr. Hill, or only from your present opinion and inference?

[Same objection.]

A. Well, from knowing the date of the agreement—December, 1877.

Cross-Q. 511. Do you remember whether you read over the paper—"Exhibit Eppler-Hill Statement"—while Mr. Hill was at your place?

A. I might have looked at it; Mr. Hill read it, and I signed it; the same as I did the order.

Cross-Q. 512. But you knew so well at that time that the date of the Draper-Kissinger agreement or lease, was in December, 1877, that you could not have made the statement to Mr. Hill that its date was not later than April 1st, 1877, as you then remembered it; that is what you mean, is it?

[Same objection.]

A. I can't bring April into my mind at all—that it was mentioned about the agreement business. Either I made the mistake, or Mr. Hill made the mistake.

Cross-Q. 513. But you do say that you knew perfectly well at that time when Mr. Hill was at your place, that the agreement or lease was dated in December, 1877, do you?

[Same objection.]

A. I knew before I gave it to Mr. Storrow, and since, that it was in December, 1877, and can't bring up no recollection that I said April, 1877, or no later.

Recess until 7.30, P. M.

7.30, P. M.

Adjourned until Monday, 10, A. M.

MONDAY, May 19, 1884, 10, A. M.

Examination resumed.

Present, Mr. Storrow and Mr. Howson for complainants.

Cross-examination of Herman J. Eppler, by Mr. Hill, continued:

Cross-Q. 514. It appears from "Exhibit Eppler-Hill Statement," that when Mr. Hill was to see you, June 27th, 1883, your memory was that

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there was a clause in the lease to the effect that the said Kissinger was to keep the ram in repair. Do you recollect having that belief at the time, or stating it to Mr. Hill?

[*Same objection.*]

A. To my recollection there was nothing said about the agreement concerning the ram; but I did say, if I said anything at all, that I gave Mr. Storrow a letter, and that the ram was mentioned, but not the word "repair," because I know very well the paper I was alluding to when I spoke to Mr. Hill.

Cross-Q. 515. What paper were you alluding to when you spoke to Mr. Hill?

[*Same objection.*]

A. A paper where Mr. Kissinger was to do the work—different kinds of work—to pay his rent.

Cross-Q. 516. You mean the lease or agreement, do you?

[*Same objection.*]

A. No, sir; I mean a letter that Mr. Draper sent to me, where he was to do different kinds of work—dated 1877—putting up a porch, smoke-house, and them things, and put the ram in—so he wouldn't need to pay any money for rent, if he would do that work.

Cross-Q. 517. Was that one of the letters which you had given to Mr. Comfort or Mr. Storrow?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 518. Please look at the papers which Mr. Storrow has put in evidence in your deposition, and state whether you find it among them; and if so, which one it is.

[*Same objection.*]

Witness examines said papers.

A. This is the letter I alluded to [indicating "Exhibit Draper-Eppler Letter, December 18, 1877," printed at answer 19, p. 2178 *supra.*]

Cross-Q. 519. And do you mean that you did not state to Mr. Hill that there was a clause about the ram in the lease or agreement, but only stated to him that there was a clause to that effect in the letter?

[*Same objection.*]

A. I was alluding to the letter, and not to the agreement or lease.

Cross-Q. 520. Are you sure about that?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 521. Are you sure of it from your recollection of what took place between you and Mr. Hill, or only as a matter of inference and opinion now?

[*Same objection.*]

A. Well, I know by having the agreement in my possession for several years, and looked over it at different times and never saw the word "ram" in it.

Cross-Q. 522. And when Mr. Hill visited you, you knew that the agreement contained no clause about the ram, did you?

[*Same objection.*]

A. I never saw the word "ram" in it, to my recollection.

[*Question repeated.*]

[*Same objection.*]

A. I must have known it by having the lease in my possession before Mr. Storrow got it.

Cross-Q. 523. Do you remember what you did state to Mr. Hill about the ram clause, and all you stated to him?

[*Same objection.*]

A. I don't know as I recollect all that was said, but I was alluding to the letter concerning the ram, not to the agreement.

Cross-Q. 524. "Exhibit Eppler-Hill statement," which you signed when Mr. Hill was at your place, refers to a paper dated not later than April 1st, 1877, and containing a clause about the ram. You now say that by that "paper" you referred to the letter, and not to the lease. Was it, then, your memory, when Mr. Hill visited you, that that letter was the document that was dated not later than April 1st, 1877?

[*Same objection, and first part of question objected to as a misstatement of the witness' testimony.*]

A. Well, I knew the letter and agreement were dated December, 1877; and if anything was said—April, it was the power of attorney—the paper that was to take effect April 1, 1877.

Cross-Q. 525. "Exhibit Eppler-Hill Statement" asserts that the clause about the ram was to the effect that said Kissinger was to keep the ram in *repair*; now, whatever the paper was that you there referred

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to, and whether it was the lease or the letter, did you not state to Mr. Hill that the clause referred to keeping the ram in repair?

[*Same objection.*]

A. I was referring to that letter, and not to the agreement. I said it mentioned the ram, not to repair the ram.

Cross-Q. 526. And you didn't tell Mr. Hill that there was anything in the agreement or the letter about keeping the ram in repair; is that your meaning?

[*Same objection.*]

A. I said the letter mentioned the ram, the same as I told Mr. Storrow when I wrote to him—that the letter had mentioned the ram.

Cross-Q. 527. And you didn't say to Mr. Hill that it mentioned keeping the ram in repair; is that your meaning?

[*Same objection.*]

A. I said that the letter mentioned the ram.

[*Question repeated.*

Objection repeated.]

A. I mean to say that I told Mr. Hill that the letter mentioned the ram.

[*Question repeated.*

Repetition objected to because the question is perfectly immaterial and frivolous, and nearly two days have now been wasted in this immaterial and incompetent inquiry.]

A. I said that the letter mentioned the ram.

[*Question repeated.*

Same objection.]

A. I didn't say the word "repair;" I said the letter mentioned the ram.

Cross-Q. 528. Then, according to your present testimony, "Exhibit Eppler-Hill Statement" contained three gross and apparent errors, to wit: first, that the paper in which the clause about the ram occurred was the agreement; secondly, that the paper containing the clause about the ram was dated not later than April 1, 1877; and thirdly, that the clause itself was about keeping the ram in repair. And with all those errors in "Exhibit Eppler-Hill Statement," you signed it, and let Mr. Hill take it away with him as a correct statement of facts, did you?

[Objected to as above, and as a substantial misstatement of the facts, particularly in this.]

Respondents' counsel interrupts, in order to protest against counsel's inserting in his objection anything to give the witness a cue or indication to aid him in forming an answer—that it omits to state that the witness at the same time furnished to respondents' counsel means to inspect the papers, which the respondents' counsel immediately proceeded to do.]

A. I signed the paper. I didn't read the paper. Mr. Hill read it, and took it away.

Cross-Q. 529. Are you sure that you didn't read the paper?

[Same objection.]

A. Yes, sir; I looked at it and signed it. Mr. Hill read it and I signed it.

Cross-Q. 530. You heard Mr. Hill read it, did you not?

[Same objection.]

A. Yes, sir. It was there when he read it. I didn't pay much attention to what he read. I signed it, and he took it away.

Cross-Q. 531. Didn't Mr. Hill explain to you at the time that he was afraid that Mr. Storrow would not show him the papers, and, in that event, he wanted your written statement of what they contained as basis for a motion to compel the production of the papers for the inspection of the respondents' counsel, or to that effect?

[Same objection.]

A. Mr. Hill wanted me to go with him to Boston, and I told Mr. Hill that I wouldn't, or, rather couldn't, go—one or the other—and then he wrote out them papers, and I signed them.

Cross-Q. 532. Didn't he ask you if you were prepared to swear to the truth of the statements contained in the papers which you signed for him, in case Mr. Storrow should refuse to show the original papers, and Mr. Hill should want your affidavit in court? And didn't you tell Mr. Hill that you were prepared to swear, and would, if called upon, swear that the statements which you signed for Mr. Hill were true?

[Same objection.]

A. No, sir; I did not.

Cross-Q. 533. You are sure about that, are you?

[Same objection.]

A. Yes, sir.

Cross-Q. 534. You now testify that the paper which you told Mr.

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Hill contained a clause about the ram was the letter and not the agreement or lease; that letter was the letter which you gave Mr. Comfort, and for which he deposited the five dollars with you, was it not?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 535. Referring to the lease, dated December 4, 1877; did Kissinger hold under that lease until he moved away on April 1st, 1880?

A. Well, he farmed under the agreement from the time he got the agreement—on the first of April, 1878, it took effect—from that till 1880.

Cross-Q. 536. And you had the agreement in your custody all the time, had you?

A. Yes, sir.

Cross-Q. 537. Please look at the paper which I now place in your hands, dated "Balto., Md., June 27, 1883," and signed "H. J. Eppler," and state in whose handwriting the signature to this paper is.

[*Same objection as to the previous "Eppler-Hill Statement."*]

A. That is my signature to the paper.

[*Mr. Hill offers the paper in evidence, to be marked "Exhibit Eppler-Hill Statement, No. 2," and states that the body of the paper is in his own handwriting.*]

The paper is as follows:

"Balto. Md. June 27, 1883.

I let J. J. Storrow and J. C. Comfort several months ago have eight letters, a written agreement, and an account book. The letters were from Thomas Draper to me. The agreement was between Draper and Geo. W. Kissinger. The account book contains accounts between me and Draper relating to my having charge of his farm during a portion of Kissinger's tenancy. For the use of these papers s'd Storrow and Comfort paid me \$25, of which \$5, was paid me for one letter. The agreement was dated, I think, either in January or April, 1877, and contained a reference to a hydraulic ram. One of the letters referred to said ram and the other letters may have contained references to said ram, but I do not remember whether they did or not. I think the letter referring to the ram was dated some time in 1877.

H. J. Eppler."

[*Same objection.*]

Cross-Q. 538. Do you remember anything about this paper having been made and signed at the time of Mr. Hill's visit to you of June 27, 1883?

[*Same objection.*]

A. Yes, sir; I signed it.

Cross-Q. 539. Did you not read it over before you signed it?

A. I might have looked at it; I don't think I read it.

Cross-Q. 540. Did not Mr. Hill read it to you before you signed it?

[*Same objection.*]

A. Yes, sir; I reckon he did, or read part of it, anyhow. I didn't pay much attention to the reading of none of the papers he wrote out there, as I was worried and had lost a great deal of sleep at that time, on account of having a sick wife.

Cross-Q. 541. This paper states that one of the letters referred to said ram, by which I suppose you meant the letter of December 18, 1877, for the use of which Mr. Comfort had given you the five dollars, did you?

[*Same objection.*]

A. Yes, sir; that is the letter I always claimed had the ram mentioned in it.

Cross-Q. 542. This paper, "Exhibit Eppler-Hill Statement No. 2," also states that the agreement between Kissinger and Draper, which you put in Mr. Storrow's hands, also contained a reference to a hydraulic ram; now, as we have already heard your sworn explanation of the statements contained in "Exhibit Eppler-Hill Statement," will you also give us an equally truthful explanation of the statements contained in this "Exhibit Eppler-Hill Statement No. 2," and, I particularly mean, of the statements which it contains to the effect that both the agreement and the letter contain references to the hydraulic ram?

[*Same objection.*]

A. It is a mistake by Mr. Hill or myself that the agreement mentioned the ram.

Cross-Q. 543. You have testified this morning to the effect that when "Eppler-Hill Statement" used the word "agreement," it meant not agreement, but letter; you can't make that sworn explanation of "Exhibit Eppler-Hill Statement No. 2," can you?

[*Same objection.*]

A. I said that when I was alluding to the paper concerning or mentioning the ram; I did not mean the agreement, but I meant the letter.

Cross-Q. 544. In Eppler-Hill Statement No. 2 it is positively asserted that both the agreement and the letter contain references to a hydraulic ram; when you signed this statement, which explicitly distinguishes be-

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tween the agreement and the letter, you did not confound the agreement with the letter, did you?

[*Same objection.*]

A. That was a mistake by Mr. Hill or by myself—about the agreement mentioning the ram—I think the mistake was by Mr. Hill.

Cross-Q. 545. Now, don't you remember that Eppler-Hill Statement No. 2 was the first one made and signed on that day, and that after you had signed it you went on to tell Mr. Hill that the reference to the hydraulic ram, which was mentioned in the statement you have just signed, was a distinct clause in the agreement obligating Kissinger to keep the ram in repair, and that after you had made that remark to Mr. Hill he took another sheet of your paper and wrote it down, and it was read to you, or you read it and signed it—this last and shorter statement which you signed being "Exhibit Eppler-Hill Statement"?

[*Same objection.*]

A. I claim that I did not say that the ram was in the agreement.

Cross-Q. 546. Perhaps I can refresh your memory. Don't you remember describing to Mr. Hill the agreement—the size of the paper on which it was written, the length of the written matter which it contained—and then saying to Mr. Hill that your memory was so clear about it that you could tell him the exact spot in the agreement where this clause about keeping the hydraulic ram in repair was written, and could almost give him the very words of the clause itself, and then telling him just where he could look on the paper and find the clause; don't you remember this, or any of it?

[*Same objection.*]

A. I remember speaking to him of—that it was a large article of agreement, or a good-sized, or something to that effect; I didn't mention the place in the agreement where the ram was mentioned; I never knew the word "ram" to be in the agreement.

Recess until 2.30, P. M.

Cross-Q. 547. "Exhibit Eppler-Hill Statement No. 2" not only refers to the agreement as containing a reference to a hydraulic ram, but also states as follows: "The agreement was dated, I think, either in January or April, 1877." What is your explanation as to this latter statement appearing in this paper which you signed for Mr. Hill?

[*Same objection.*]

A. Well, I knew that that agreement was dated December, 1877, because I had written so to Mr. Storrow. Therefore, I know that it was dated December, or I wouldn't have wrote in that way.

Cross-Q. 548. How came you to state to Mr. Hill: "The agreement was dated, I think, either in January or April, 1877?"

[*Same objection.*]

A. I don't think I made that statement when I knew it was dated December, 1877.

Cross-Q. 549. Do you swear that you didn't make that statement to Mr. Hill at that time?

[*Same objection.*]

A. Yes, sir; I say that I knew it was dated in December, and I say I didn't make the statement.

Cross-Q. 550. Do you swear that you didn't state to Mr. Hill at that time that the agreement contained a reference to a hydraulic ram?

[*Same objection.*]

A. Yes, sir; I had reference to the letter dated December in place of the agreement. The agreement didn't have it in it.

Cross-Q. 551. At the time when you signed the "Exhibit Eppler-Hill Statement No. 2," you didn't have a very clear memory as to the date of that letter, did you?

[*Same objection.*]

A. I knew the letter was dated in December, 1877.

Cross-Q. 552. Then when the "Exhibit Eppler-Hill Statement No. 2" used the words: "The agreement was dated, I think, either in January or April, 1877," you didn't mean by that the letter, did you?

[*Same objection.*]

A. No, sir; I knew that the letter and the agreement was dated December, 1877.

Cross-Q. 553. Knowing so positively as you say you did that the letter was dated in December, 1877, how happened you to express yourself to Mr. Hill so guardedly about the date of the letter, to wit: "I think the letter referring to the ram was dated some time in 1877?"

[*Same objection.*]

A. I think I told Mr. Hill that it was dated December, 1877, because I knew it was—in place of some time in 1877.

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Cross-Q. 554. And knowing so well at that time as you say you did that the date of the agreement was also in December, 1877, how came you to tell Mr. Hill that the agreement was dated, as you thought, either in January or April, 1877?

[*Same objection, and also that the question has been answered over and over again.*]

A. I did not tell Mr. Hill so, when I knew that it was dated December, 1877.

Cross-Q. 555. Did you tell Mr. Hill anything about the date or the contents of that agreement?

[*Same objection.*]

A. Well, we spoke about it. I don't know that I told him the date, more than 1877; perhaps I did say December, 1877.

Cross-Q. 556. Both of those statements which you signed that day referred to the date of the agreement; I suppose you remember that the date of the agreement was under discussion at the time, do you not?

[*Same objection.*]

A. Yes, sir; I knew that we spoke of the agreement; and I told him it was dated in 1877, and I am certain I did not say January or April.

Cross-Q. 557. And yet you signed, not one paper, but two papers that day, both stating the date of the agreement not later than April, 1877; how do you account for that?

[*Same objection.*]

A. Mr. Hill done the writing and the reading. Not paying any attention to it, or caring about it, I just took and signed the papers. I knew that the agreement was dated December, 1877, and to take effect in 1878.

Cross-Q. 558. And you knew at the same time that the power of attorney was given you before the first of April, 1877, did you?

[*Same objection.*]

A. Yes, sir; because I took charge of the farm on April, 1877, and I had the paper before I took charge of the farm.

Cross-Q. 559. In cross-answer 547 you state that you knew that the agreement was dated December, 1877, because you had written so to Mr. Storrow. When did you write to Mr. Storrow that that agreement was dated December, 1877?

[*Same objection.*]

A. Some time in January or the beginning of February, 1883.

Cross-Q. 560. Before Mr. Storrow or Mr. Comfort had first been to see you?

[*Same objection.*]

A. No, sir; after they had been to see me.

Cross-Q. 561. Before Mr. Storrow had got the papers from you, or after?

[*Same objection.*]

A. Well, he had got some papers from me before that.

Cross-Q. 562. Before he had got the papers at Marysville, or after?

[*Same objection.*]

A. After he had got the papers at Marysville.

Cross-Q. 563. Didn't he get the agreement at Marysville at the time you searched your papers there for him?

[*Same objection.*]

A. No, sir.

Cross-Q. 564. Where did he get it?

[*Same objection.*]

A. I gave it to Mr. Comfort, at Baltimore.

Cross-Q. 565. When Mr. Comfort visited you there alone, or when he came with Mr. Storrow?

[*Same objection.*]

A. When Comfort was there alone.

Cross-Q. 566. How many times was Mr. Comfort there alone at Baltimore to see you before Mr. Hill was to see you at the time you signed the two Eppler-Hill statements?

[*Same objection.*]

A. He might have visited me three or four times; I never kept no account of it.

Cross-Q. 567. At which of his visits did you give him the Draper-Kissinger agreement or lease?

[*Same objection.*]

A. I think it was at the second visit he made there by himself.

Cross-Q. 568. Did he come to see you at Baltimore twice before he and Mr. Storrow together came to see you there?

[*Same objection.*]

A. Only once to my recollection.

Cross-Q. 569. Then when he came along to see you at Baltimore and got the agreement from you there, he had already been there alone once to see you before, and he and Mr. Storrow had been there once together to see you; is that the fact?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 570. And the Draper-Kissinger agreement you had there in Baltimore all the while, had you?

[*Same objection.*]

A. Yes, sir; until Mr. Comfort got it.

Cross-Q. 571. Why didn't you give it to Mr. Comfort the first time he came to see you, or to Mr. Storrow and Mr. Comfort when they came together to see you?

[*Same objection.*]

A. Well, when they were to see me they asked me to look through some of my papers. I didn't just have time to go through everything at the time they were there, and I made a promise that I would look over my papers and if I found any I was to let them know by mail or by letter, or something to that effect.

Cross-Q. 572. And did you write to Mr. Storrow that you had found the agreement?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 573. Was that in the same letter in which you wrote him that you had found a letter containing a reference to the ram?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 574. Then, when Mr. Comfort came and got the letter which contained the reference to the ram, did he at the same time get the agreement?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 575. When that letter was found in the book by your daughter, was the agreement found with it?

[*Same objection.*]

A. No, sir.

Cross-Q. 576. Where did you find the agreement?

[*Same objection.*]

A. I found it in a box that I have got, there among some other papers.

Cross-Q. 577. Did you find it before or after the letter was found?

[*Same objection.*]

A. I rather think it was after the letter; I know it was on a Sunday that I had my place of business closed up and looked over my papers.

Cross-Q. 578. The five dollars which Mr. Comfort deposited with you as security for the letter, as you have heretofore testified, was, then, I suppose, intended as security both for the letter and agreement; is that the fact?

[*Same objection.*]

A. No, sir; the agreement wasn't mentioned; we only spoke of the letter; the agreement was laying there, and I told him if he wanted to take it along he could.

Cross-Q. 579. In the "Exhibit Eppler-Hill Statement No. 2" you start out by saying: "I let J. J. Storrow and J. C. Comfort several months ago have eight letters, a written agreement, and an account-book." As I now understand you, you had let Messrs. Storrow and Comfort have seven of the letters and the account-book, and had turned over the agreement and one letter to Mr. Comfort alone; am I right?

[*Question objected to as a perversion of the meaning of the statement.*]

A. Yes, sir; I gave them letters and papers at different times; I had given them at one time seven or eight, or six or seven, or something of that kind; and then I gave Mr. Comfort a letter and agreement afterwards; I never kept no account of what number they got from me altogether.

Cross-Q. 580. All the letters that they got from you, except the letter of December, 1877, they got at one and the same time at Marysville, did they not?

A. I don't think they did. Mr. Storrow was at my place at one time, at the boarding-house in Baltimore. I gave him a lot of papers to look over, and told him if he found any there that were of any use to him he could have them.

Cross-Q. 581. Did he take away any letters or papers at that time?

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A. He took some away. I know he said they didn't amount to much—or much account—and I didn't notice how many there was, and don't know if he mentioned it.

Cross-Q. 582. When was that?

A. Some time in 1883, in the beginning.

Cross-Q. 583. Was it before, or after Mr. Storrow and Mr. Comfort had got the papers at Marysville?

A. After.

Cross-Q. 584. And was it before, or after Mr. Comfort had got the agreement and the letter of December, 1877?

A. To the best of my knowledge it was afterwards.

Cross-Q. 585. Was it before or after Mr. Hill's visit to you of June 27, 1883?

A. Before that.

Cross-Q. 586. Referring to the account-book which Mr. Comfort and Mr. Storrow got from you: describe that account-book.

A. It is a small memorandum book. I don't know whether it is a doctor's advertisement or what it is—something of that kind. I believe it has every other leaf or so blank.

Cross-Q. 587. When and where did they get it from you?

A. I think they got that at Marysville.

Cross-Q. 588. At the same time that they got the other papers there?

A. Well, I really don't recollect. I rather think they did, though, when they got the first papers from me.

Cross-Q. 589. Then you don't recollect positively whether they got papers from you at Marysville once or more than once?

A. They only got papers from me at one time at Marysville, and at that time they got the book.

Cross-Q. 590. Did that book contain all your accounts with Draper and Kissinger, relating to Kissinger's tenancy of the farm, from April 1, 1877, to April 1, 1880?

[*Objected to, because the book is the best evidence of its contents.*

Mr. Hill replies that the question would be admissible even if the book were in evidence.

Complainants' counsel reply that the question calls upon the witness to remember what accounts are in the book, and then to remember whether there were any others, and his answer must involve a statement upon both those points. As to the first of them, the book is the only proper evidence.]

A. No, sir; there were some things kept in another book; then I got this book that Mr. Storrow got, and what wasn't settled up I copied out of the other book into this one that Mr. Storrow got.

Cross-Q. 591. When did you copy those things into that book that Mr. Storrow got?

A. Some time in 1878; I have got no date for it.

Cross-Q. 592. Where is that other book from which you copied those things?

A. I don't know; I can't find it nowhere; I have been looking for it different times.

Cross-Q. 593. Referring to this book which Mr. Storrow got, did it contain any original entries, or were the entries all copied from the former book?

A. No, sir; they weren't all copied.

Cross-Q. 594. After you opened this book of account and copied into it so much as you saw fit to copy from the former book, did you then, from that time until Kissinger moved away, use it for keeping your accounts with Draper and Kissinger relating to Kissinger's tenancy?

A. Yes, sir.

Cross-Q. 595. And during that period, did you keep all of said accounts in it?

A. I think I did.

Cross-Q. 596. Has Mr. Storrow returned that book to you, or is it still in his possession?

A. He has not returned it to me.

[Complainants say that defendants can have the book by asking for it. Respondents ask for its inspection.]

Complainants' counsel produces the book and hands it to respondents' counsel.]

Cross-Q. 597. Will you please look at the book which Mr. Storrow has just placed in my hands and examine the accounts relating to Mr. Kissinger's tenancy of the Draper farm, and point out to the examiner all the original entries pertaining to those accounts that were not copied from the other book mentioned by you, in order that the Examiner may copy them upon the record in the order in which they stand in the book produced here?

[Witness examines book.]

A. This I have got dated wrong; I copied it from the other book;

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here it starts; here are the regular entries made in this book—from here down they are original.

[*Pointing to the following entries near the bottom of the first page of accounts:*

"1879	
Aug 2nd Cash Kissinger	56
Sept 10 O H Miller cash order	3.30
Nov 14 H J Eppler Potatoes	3.10
	<hr/>
	30.71

Settled to April 1880"]

Cross-Q. 598. Are the entries on the next page of accounts after the page from which the above copy has been made, original entries, or were any of them copied from the former book?

A. To the best of my knowledge them there are from the former book, [indicating all the entries on the page from the top down to the following entry :

"1879	
J. Kline, Dec. 14, Jan. 14,	5.00"]

All the entries from this entry down to the bottom are original entries.

Cross-Q. 599. Now, please refer to the next succeeding page of said accounts, and state whether the entries thereon are original or copied from the former book.

A. The first two are from the former book, and the last two are original. [The original are as follows:

"*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*

1880

Feb. 21, S. S. Leiby, corn,	39.37
Henry Foulk, Freight,	.45

59.82"]

Adjourned until May 20, 1884, 10, A. M.

MAY 20, 1884, 10, A. M.

Examination resumed.

Present, same counsel, and also Mr. Jacobs for the respondents.

Cross-examination of H. J. Eppler, by Mr. Hill, continued:

[*The red ink paging has been put into the memorandum-book, above re-*

ferred to, by the Examiner during the taking of testimony. The Examiner has also written his name and the date in said book.]

Cross-Q. 600. Please refer to the next succeeding page of said account-book, to wit, red ink, page 4, and point out to the Examiner what items on said page are original and what items are copied from the former book.

[Witness examines book.]

A. These are original—from here down. [Indicating entry as follows: "1879, Jan. 2, to nailes, .65."]

Cross-Q. 601. Answer the same question as to the next page, numbered, in red ink, 5.

[Witness examines book.]

A. The first line was brought over from the other page, and the two entries are original. The entries are as follows:

"1880.

From Jan. 14 to Feb. 14,

5.00

From Feb. 14 to Mch. 14,

5.00"

Cross-Q. 602. Answer the same question as to the next succeeding page, marked 6.

A. Them is all original.

Cross-Q. 603. Are all the entries after page 6 original?

A. Yes, sir; pages 7 and 8 are all original; page 9 is original and also page 10. The following entry on page 2 was back rent of 1878, but was paid in 1879; the entry is as follows:

"Oct. 15, rent of 1878 S. Kenady back rent \$6.00."

Here are some on page 18 that have got no date. I set that down to see what the difference was in the collecting and the paying out. Page 19 is an account of my own that has nothing to do with the farm; page 20 was an account of my own also. On page 1, where I said I might have the date wrong, that date is right.

Cross-Q. 604. Please point out the last entry in the book, belonging to your account of Kissinger's tenancy of the farm.

A. Except some mere pencil calculation on page 18, the following entry is the last relating to Kissinger—it is the Draper note that Leiby held—at the Kissinger sale.

[The witness indicates the following entry on page 7:]

"E. B. Leiby note 51.50."

That is the way I understand the question.

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Cross-Q. 605. Then the entries from the top of page 1 to, and including, the item "E. B. Leiby note 51.50" comprise all the entries that the book contains relating to Kissinger's account, except the pencil calculation on page 18; is that the fact?

A. Yes, sir; they are all in there; but there are other ones in there, that don't belong to that.

Cross-Q. 606. Please point out to the Examiner all the entries in the book between the top of page 1 and the item, "E. B. Leiby, note, 51.50," which do not belong to the Kissinger account.

A. The whole of page 2 has nothing to do with the Kissinger account. On page 3, the items, "Jesse Wagner, for Stone, 15.00," and "Henry Foulk; Freight, 45," have nothing to with it. On page 4, the last three entries do not concern Kissinger. They are as follows:

"March 22 glass and putty, sprigs,	4.98
By check Mr. Draper,	30.00
Percentage myself,	10.00"

The "Check Mr. Draper," is rent-money from tenants of other houses belonging to Mr. Draper. The entries on page 5 do not allude to Kissinger. On page 6 the following entry is the only one that alludes to Kissinger: "July 15, Neyhart and son wheat paid, 46.05." On page 7, the entry, "E. B. Leiby, note, 51.50," is the only one alluding to him.

[Respondents' counsel requests the Examiner to copy on to the record at this point, and in their consecutive order in the book, all the entries contained in the book belonging to witness' account of the Kissinger tenancy, as stated by the witness; and in printing the record to have those entries which the witness says were copied from the old book printed in italics, and those entries which the witness says are original printed in ordinary roman letters, so that the eye can easily distinguish the one class from the other.]

Complainants' counsel objects to picking out items from different pages, and thus making up a new account, and printing them consecutively as if they were copied as a whole, but has no objection to the Examiner indicating by typographical devices, with proper explanations, the distinction between the different items as stated by the witness in his recent testimony on the subject.

Respondents' counsel requests the Examiner to indicate on the record the sequence of the pages on which the entries occur, and also requests the Examiner to copy on to a separate sheet or sheets all the written entries in

the book in their consecutive order, indicating the pages on which the entries occur, and to file and print it with exhibits in the case as "Exhibit Copy of Eppler Account Book."

All the entries in the book, and the examination thereon, objected to by complainants' counsel as immaterial and as new matter.

The Examiner copies the entries relating to the Kissinger tenancy as follows:

The entries from page 1, relating to the Kissinger account:

"1878 collected moneys.		
Aug. 1,	To $\frac{1}{2}$ bushel Peaches,	.50
" 7	To $1\frac{1}{2}$ " "	1.50
" 15	To $\frac{1}{2}$ " "	.50
" 20	To 1 " "	2.00
	To 2 " "	3.00
	To $\frac{1}{2}$ " "	1.00
" 21	To 1 " "	2.00
" 22	To 1 " "	2.00
" 24	Cash by Kissinger,	3.80
" 27	To $\frac{1}{2}$ bushel Peaches,	1.00
" "	Cash by Kissinger,	2.35
" 31	To $\frac{1}{2}$ bushel Peaches,	.75
" "	Cash by Kissinger,	3.35
1879.		
Aug. 2,	Cash Kissinger,	.56
Sept. 10,	O. H. Miller, cash order,	3.30
Nov. 14,	H. J. Eppler, potatoes,	3.10
		<hr/>
		30.71

Settled to Aprile, 1880."

There are no entries on page 2 relating to the Kissinger account.

Entries from page 3:

" Nov. 7.	1878.
James Zimmerman, Cash Corn,	5.00
Feb. 21, 1880. S. S. Leiby, Corn,	39.37

Entries from page 4:

"Sept. 14.	1878.
Money paid out.	
Sept. 14. To glass and hinges,	.66
Oct. 3. To Freight, gass lime,	7.50
" " To 300 bushel lime,	30.00
1879.	
Jan. 2. To nailes,	.65
" " Lumber from L. Heck,	13.80
" To Borough tax, 1879,	13.80
" To State and County tax, 1879,	23.70
Aprile 4, To 300 Bushel Lime,	27.00

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July 14, Strips, window lights, putty, work,	5.00
Dec. 25 State and County tax,	23.70
Jan. 12, 1880, For nails,	.25
Jan. 24, Borough tax,	19.75
March 16, Judgment Kissinger and Draper,	30.00"

There are no entries on page 5 relating to the Kissinger account.

Entry from page 6, relating to the Kissinger account :

"1880.

July 15. Neyhart & Son, Wheat. Paid,	46.05"
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Entry from page 7, relating to the Kissinger account :

"E. B. Leiby, note,	51.50"]
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Cross-Q. 607. Referring now to the item in this book of yours which you say relate to the Kissinger tenancy: you have testified that certain of these items—designating them—are not copies from the old book, but are original entries in this book. Referring now to these original entries: were they each and all written in the book on the dates which they respectively bear?

A. To the best of my knowledge, they are.

Recess until 2.30, P. M.

[*Witness makes the following statement:*

"I have studied over the book matter a little, and think perhaps I have got a little mistake in there, and I would like to correct it if there is one."

Respondents' counsel says: "Go on, and correct it." Witness proceeds to examine memorandum book above referred to, and then says:

"I think that there are three or four copied charges here on page 2. The parties did not always pay their rents when they were due, and it is not dated at the time he paid me. Sometimes he was two months back, and sometimes he was three months back with his rent. Therefore, I think that them three or four charges is copied from the former book.

The charges are as follows:

1879

J. Kline Jan. 14 to March 14,	10.00
J. Kline March 14 to April 14,	5.00
J. Kline April 14 to May 14,	5.00
J. Kline May 14 to June 14,	5.00

Them three, and perhaps the four.

And on page 4 the following four charges, and perhaps the fifth charge, were copied from the former book:

1879
 Jan. 2 To nailes65
 " " Lumber from L. Heck, 13.80
 " " To Borough tax 1879 13.80
 " " To State and County tax 1879, 23.70
 April 4, To 300 Bushl Lime, 27.00."]

Cross-Q. 608. What makes you think that the items on page 2, referred to in your last answer, to wit, the items relating to J. Kline, were not original entries, but were copied from the former book?

A. He was always back with his rent, and it was some time after the first of the year 1879 that I copied the book.

Cross-Q. 609. How do you know that it was some time after the first of the year 1879 that you copied the book?

A. On account of the lumber that we got at Heck's being charged on the former book—to build a smoke-house and pig-pen at the house where this man Kline lived.

Cross-Q. 610. At what time in the year 1879 did you copy the entries from the old book into the new one?

A. I cannot recollect. I have no exact date for it, as I didn't mark the place where I left off in the old book.

Cross-Q. 611. What had the two following entries, to wit:

"1879
 Jan. 2 To nailes65
 " " Lumber from L. Heck, 13.80,"
 to do with the Kissinger account?

A. Kissinger done the hauling, and I got him the nails to build a smoke-house.

Cross-Q. 612. Got whom the nails?

A. Mr. Kissinger. He was to put the smoke-house up.

Cross-Q. 613. And was he to pay for the lumber from L. Heck?

A. No, sir; I paid it out of Mr. Draper's money.

Cross-Q. 614. Why was that lumber charged on Kissinger's account?

[*Objected to because it does not appear, nor has the witness testified, that it was charged on Kissinger's account.*]

A. It was not charged on Kissinger's account. I was asked to mention all that concerned Kissinger, and on the grounds of him hauling and doing the work, I counted that it concerned Kissinger's account—by doing the hauling and the work.

Cross-Q. 615. Was Kissinger credited on the account with doing the hauling and the work?

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A. Mr. Kissinger kept his own accounts for the work he done and hauling for Mr. Draper. I never kept no work nor hauling account—that Mr. Kissinger done.

Cross-Q. 616. Then that entry of "Jan. 2, 1879, lumber from L. Heck, 13.80," did not belong to the Kissinger account, did it?

A. Not excepting the work and hauling brought it concerning Kissinger. That is the way I understood it this morning. Kissinger took some of the lumber up to the barn for some purposes—to make feed-troughs or feed-boxes—something to that effect they were, he told me.

Cross-Q. 617. On page 3 of the account-book I observe the following entry; "Nov. 7, 1878, Jess. Wagner for stone cash 15.00," which you have stated was copied from the old book; what transaction does that entry refer to?

A. That is the stone that Wagner got out of the mountain for the wall back of the Northern Central round-house.

Cross-Q. 618. And the entry relates to cash paid you by Wagner for the stone, does it?

A. Yes, sir.

[Respondents' counsel requests the Examiner to certify upon the record at this point a brief description of this account-book, here produced, and a copy of the printed matter, printed on the outside of the cover at the beginning of the book.]

The book is one of Dr. Pierce's small, paper-covered pocket memorandum-books, having pages of advertisements and blank ruled pages alternately. The printed matter on the front page of said cover is as follows:

"Pierce's Memorandum and Account Book designed for farmers, mechanics and all people who appreciate the value of keeping a memorandum of business transactions, daily events, and items of interest or importance, for future reference. A present from the World's Dispensary Medical Association, Buffalo, N. Y. and London, Eng.

Entered according to Act of Congress, in the year 1879, by the World's Dispensary Medical Association, in the office of the Librarian of Congress at Washington."]

Cross-Q. 619. Will you please explain exactly what your duties were as agent for Mr. Draper from April 1, 1877, to April 1, 1880, so far as the farm or the tenancy of Kissinger was concerned?

A. Well, I was to see that he got his crops out, and that he got his lime—gas-lime—and phosphate, or fertilizer, as you may call it, to see after the farm in general, send Mr. Draper statements of how things was going, sell his grain—what was an over-plus and wasn't fed into his

stock; that is as near, to my recollection, of the instructions I got from Mr. Draper; I was to see that his timber wouldn't be cut for him—the young chestnut, as he called it.

Cross-Q. 620. Did the procuring and putting in of the ram come within your duties, or was that a matter between Mr. Kissinger and Mr. Draper alone?

A. That was a matter between Kissinger and Draper; he spoke to me one time when he was at my place with Mr. Kissinger—that they had ordered a ram to carry the water up to the house or throw it up.

Cross-Q. 621. Repeat all of that conversation, so far as you remember it.

A. When they started over they stopped there at my place on their way to Milltown to order a ram; Mr. Draper said he would stop at my place when he comes back; they didn't stop when they came back, but went on home to Mr. Kissingers—to the farm. They came down afterwards on the same evening and told me they had been over to Milltown and said they had ordered the ram now, and said that it was to be put in soon, or that they wanted it in soon—one or the other. As I had my business to attend to, I couldn't listen to all the conversation that was going on; they were at my place several times at that visit of Mr. Draper, but I couldn't tell what the conversation was, as I had my business to attend to and they would talk some times for an hour there.

Cross-Q. 622. Did they say anything about the kind of pipes that were to be used in putting in the ram?

A. Not in my presence.

Cross-Q. 623. They didn't inform you, then, that wood pipes were to be used for any part of the work?

A. Not to my recollection.

Cross-Q. 624. You have put in evidence (answers 33, 34, p. 2182) two promissory notes, dated November 19, 1878; explain to us the reason why those notes were given, and if they were in a settlement for anything, state what.

A. They came there and asked me whether I had any blank notes; to my recollection, I had none, and I went to Leiby's store and got some. Mr. Draper filled them out, Mr. Kissinger signed them in my presence, and I witnessed them. The rest that I know about it is just what they told me.

Cross-Q. 625. What did they tell you about it?

[*Objected to as calling for hearsay, and otherwise incompetent.*]

A. They said they had a settlement about some back rent, and I don't know whether they mentioned colts or not, but I think there was something concerning colts in the settlement; to the best of my knowledge there was.

Cross-Q. 626. Is that all they told you about it?

A. To the best of my recollection. I had my business to attend to there, and I didn't hear all they talked about. They called my attention to the signing the notes, and then I went to my business again, when anybody came in. In the evenings we were always busy.

Cross-Q. 627. That was November 19th, 1878, at which time, as I judge from your testimony, you had been collecting rents from Kissinger for over a year and a half. Didn't they consult your accounts in making up their settlement?

[*The first part of the question objected to as directly contrary to the testimony.*]

A. I never collected no money rents from Kissinger. What peaches or grain he brought down I always gave Mr. Draper credit, and when there was any money on hand I would either send him the money or a check. That was on a visit in November that Draper made to Marysville, or the farm, in 1878. They did not consult my accounts in making up their settlement.

Cross-Q. 628. In answer 590, referring to your account-book here, you say: "What wasn't settled up I copied out of that book into this one that Mr. Storrow got." Explain what you mean by, "What wasn't settled up," so far as the expression related to the Kissinger tenancy account.

A. That was a settlement between Draper and myself of the rent from the tenant-houses, and such fruit and grain as Mr. Kissinger had delivered there, if there was any. The first year I was agent Mr. Kissinger was under money rent, but I never received any from him.

Cross-Q. 629. When did you have your first settlement with Mr. Draper?

A. Some time in 1878—I have no date for it—I sent a settlement to Mr. Draper, and what money was due him; and the old book is lost or tore up, and I never could account for what became of it.

Cross-Q. 630. After you had that first settlement, did you have any other settlement with Mr. Draper before you opened this new book of account and made the copies into it from the old book?

A. No, sir; there was only one settlement that I closed up, and sent him the statement and the money, and that is the settlement that I just referred to in my last answer.

Cross-Q. 631. Then the entries relating to the Kissinger tenancy, that you copied from the old book into the new one, as you have testified, comprise your Kissinger accounts from the time of your settlement with Draper to the time when you opened the new book and copied the accounts into it, do they?

A. Well, I don't know how soon there were entries made after the settlement. I have got no date to go by, when I sent the statement and money due to Mr. Draper, as the old book was lost or destroyed.

Cross-Q. 632. I understood you, heretofore, to testify, in substance, that you copied into the new book what accounts in the old book you had not settled up with Draper; is that the fact—that you did so—or not?

A. The meaning of my answer in that was: what I entered into that book after the settlement—after that book was full, them unsettled accounts I entered over on the second book. There was no unsettled accounts at the time of our settlement.

Cross-Q. 633. It has appeared in evidence that there were various repairs on the house, barn, and, possibly, other buildings occupied by Kissinger during the year 1877, 1878, and 1879; did you have anything to do with those repairs or pay out any money in connection with them?

A. I had nothing to do with the repairs. Mr. Kissinger was to do that, or have it done. I paid some money for a judgment against Draper and Kissinger, given by Squire Theophilus Fenn—the old man—for some tinning that was done about the house, and, perhaps, elsewhere, but not to my knowledge. The judgment was in favor of Curtis Strine.

Cross-Q. 634. That payment is entered on your book, page 4, under date of March 16th, 1880, is it not?

A. Yes, sir.

Cross-Q. 635. In answers 281, 284, 285, and 286, you have referred to a Mr. Shireman; is that Mr. Joseph H. Shireman, of York, Penna.?

A. He is from York, he claimed; and he signed his name, "J. H. Shireman."

Cross-Q. 636. You speak of Mr. Shireman's being to see you, and also of your meeting him at York; how many times was he ever to see you, and when, and where?

A. He has been to see me at Baltimore, at the corner of Dauphin and John streets, No. 80; and then he wrote to me whether I had found the

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receipts or papers, and where he could see me. To the best of my recollection, I wrote to him that I would be going through York on the mail train the day before the inauguration of Governor Pattison at Harrisburg; and he was there at the train on its arrival.

Cross-Q. 637. Where were you going on that mail train, and on what business?

A. I took my wife up to her sister's, at Harrisburg; and then I went to Marysville after leaving her at Harrisburg, and, to the best of my recollection, settled up with my brother at that time.

Cross-Q. 638. On that trip to Harrisburg, I suppose you had an interview with Mr. Storrow or Mr. Comfort, had you not?

A. No, sir; I don't think I had seen either one of them before that—not to my recollection—and did not at that time.

Cross-Q. 639. How many times was Mr. Shireman to see you at Baltimore?

A. Only once, to my recollection. He wrote to me several times—once on the 8th of March, and on the 20th of March. I don't recollect whether I answered his cards or not—one I know I didn't.

Cross-Q. 640. When he interviewed you at Baltimore, did he ask you anything about the ram that was put in on Draper's farm?

A. Not to my recollection. He came there and introduced himself in this way: "I didn't come here to put you to jail, nor to hang you." I told him I didn't care a damn what he came for; I was on the way to my dinner. He said he would wait till I would come back, and he was asking me different things about being to Milltown, and asked me when I was there. I told him I couldn't tell him, excepting I could find some papers to go by, but thought it was 1874.

Cross-Q. 641. Didn't you, at that time, tell Mr. Shireman that when you took charge of the Draper farm, as agent, the ram had already been put in, and was in on the farm at that time?

A. No, sir; I did not; because I knew better.

Cross-Q. 642. Didn't you tell him, in effect, that when you took charge of the Draper farm, as agent, the ram was already in on the farm?

A. No, sir.

Cross-Q. 643. Didn't you tell him in substance that you didn't know when the ram was put in on the Draper farm, but that it was already in when you first became Mr. Draper's agent?

A. No, sir; I did not. I don't think that Mr. Shireman mentioned

ram to me at all—I am certain he didn't—on his visit to Baltimore to see me. He had very little to say when he was there.

Cross-Q. 644. Didn't you tell him, in substance, that to the best of your recollection, you took charge of the Draper farm on the first of August, 1878, and that the ram was then in on the farm?

A. No, sir; I knew that I took charge of the farm on April 1, 1877.

Cross-Q. 645. Didn't you tell him, in substance, that you knew that the ram had been put in on the Draper farm before the 1st of August, 1878?

A. No, sir; I didn't set no month that it was put in, to Mr. Shireman at Baltimore. I don't think the word "ram" was mentioned—not to my recollection—when he was at Baltimore. He was in a big hurry to get away. He told me that he was on the way to Florida, and said he would see me some other time. I was behind my counter. He asked me to change him a two-dollar bill. I done so. He picked up one dollar and started for the door, and said that other dollar was mine. I asked him what that was for. He said, "For your time," and while he was talking to me, and then he left.

Cross-Q. 646. You never met Mr. Shireman at York but once, did you?

A. That is all, to my recollection.

Cross-Q. 647. Referring now to that interview with him at York: didn't you tell him there that the ram had been put in on the Draper farm before the first of August, 1878?

A. No, sir. He asked me at York whether I knew what year that ram was put in. I told him in 1878. He said that Swartz told him it was in 1877. I told him the second time that it was in 1878, and then he told me I shouldn't say nothing about it.

Cross-Q. 648. You are sure that you have stated the conversation at York correctly, are you?

A. Well, then, he said Mr. Swartz told him when he butchered for Kissinger, in 1877, that the ram was in; and he asked me whether I had found any papers or receipts—what I had promised to look for. I told him that I hadn't found them, or rather, hadn't time to look for them. That is about all, to my recollection.

Cross-Q. 649. Didn't you tell him at York that you didn't know when the ram was put in, but that it was put in before the first of August, 1878?

A. No, sir.

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Cross-Q. 650. Didn't you tell him at York that, to the best of your recollection, you took charge of the Draper farm as agent on the 1st of August, 1878?

A. No, sir; for I knew better, from the power of attorney that I had got from Mr. Draper—that I was agent from 1877, the 1st of April.

Cross-Q. 651. Didn't you tell him at York that when you first took charge of the Draper farm as agent the ram was already in?

A. No, sir; I did not.

Cross-Q. 652. Didn't you tell Mr. Shireman at Baltimore, on the occasion you have referred to, that you were at Draper's farm August 1st, 1878, and the ram was then in?

A. No, sir; I can't bring to recollection that the ram was mentioned at Baltimore at all; and I know I didn't mention August 1, 1878—just hit on the month and the day without having any paper to look at at all with the date on.

Cross-Q. 653. Didn't you tell him at York that you were at Draper's farm August 1st, 1878, and the ram was then in?

A. I told him the ram was put in in 1878, but specified no month. He told me I shouldn't say anything about it, if I was sure of it.

Adjourned until May 21st, 1884, at 10, A. M.

MAY 21, 1884, 10, A. M.

Examination resumed.

Present, same counsel, and also Mr. Smith, for complainants.

Cross-examination of Herman J. Eppler, by Mr. Hill, continued:

Cross-Q. 654. Were you in the habit of going up on the mountain gunning with your brother, Simon G. Eppler, from time to time?

A. Yes, sir.

Cross-Q. 655. For how many years were you in that habit?

A. For eighteen or twenty years, in hunting time.

Cross-Q. 656. What was hunting time, as you call it?

A. Generally from the 1st to the 15th day of September, to December the last or January 1st.

Cross-Q. 657. You say that you was up there once hunting with your brother, Simon G. Eppler, and coming through Draper's timber found some stumps and tops of chestnut timber lying there, and saw that some of the trees had been cut down; how many times did it happen that when

hunting you were on Draper's land and saw such stumps and tops, and that trees had recently been cut down?

A. I was on Mr. Draper's land many a time hunting, and when I saw them trees cut I made mention of it to my brother, "I am going down to see Mr. Kissinger, to ask him who or why them chestnut timbers were cut." He said he cut them for pipe or spouting for a ram, as near as I can get at the words. If I seen them afterwards, which perhaps I did, I didn't think it was necessary to go down a second time to see him. That was after I became agent for him, or I should never have bothered myself who or why they were cut.

Cross-Q. 658. I did not ask you to repeat this little story, but asked you a specific question which you have not answered, and which I now repeat and request you to answer.

A. Well, I can't bring to recollection of seeing it more than once; if I did I paid no attention to it after the one time I saw it.

Cross-Q. 659. Describe just where you saw those stumps and tops—their distance and direction from Kissinger's barn.

A. The distance I could not name. It may have been five hundred yards, or it may have been seven hundred yards. It was a little to the left as you go from the barn up to the mountain.

Cross-Q. 660. Was anybody with you besides your brother on that hunting trip?

A. No, sir.

Cross-Q. 661. Did your brother go with you from the stumps down to Kissinger's barn?

A. Yes, sir.

Cross-Q. 662. Describe just where you found Mr. Kissinger, and what he was doing, and who, if anybody, was with him?

A. I found him down at his horse-stable doing something right inside the door. I don't know whether he was attending to the horses or what.

Cross-Q. 663. Did you and your brother go into the stable?

A. No, sir. There was no one else there that I saw.

Cross-Q. 664. How long did you stay there?

A. Just long enough to ask him about the timber and get an answer. I got the answer, but I couldn't tell what length of time it was

Cross-Q. 665. What did you do then?

A. Went out through the orchard, and into the woods, and started out gunning again.

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Cross-Q. 666. Together with your brother?

A. Yes, sir.

Cross-Q. 667. By what way did you return home to Marysville from that gunning trip?

A. To the best of my recollection we came down the old country road that leads into Marysville down by the Northern Central round-house.

Cross-Q. 668. When you started out on the trip, did you go out into the woods by that same road?

A. We generally went by what we call the mountain road when we went up there gunning; to the best of my recollection we went up that way that morning.

Cross-Q. 669. You didn't go or come by the valley road that day, did you?

A. We didn't go by that—some call it the valley road, but we always called it the country road; in the borough I rather think it is called the valley road.

Cross-Q. 670. You returned by the valley road, then, if I understand you?

A. County or valley road, whichever it is called; some call it country and some valley.

Cross-Q. 671. When on your return from hunting that day you came down from the mountain to the valley road, where did you strike into the valley road?

A. I can't exactly tell; it was several miles above Marysville.

Cross-Q. 672. And from that point you traveled by the valley road to Marysville, did you?

A. To the best of my recollection we did.

Cross-Q. 673. From your setting out to your return on that gunning trip, did you and your brother call at anybody's place but Kissinger's that day, or see anybody but Kissinger?

A. We didn't call at no place. Perhaps we saw some folks that day.

Cross-Q. 674. Name all the persons whom you saw while on that trip, besides Mr. Kissinger.

A. I can't name any, because I had no business with them; and if I saw them paid no attention to them outside of Kissinger.

Cross-Q. 675. What time of day was it when you started from and when you returned to Marysville?

A. Well, some time in the morning we started out, and we generally made it a rule to get home about noon, or a little after.

Cross-Q. 676. Have you any recollection as to about what time you started out and got back on that particular day?

A. No, sir; nor no other day.

Cross-Q. 677. While you and your brother were at Kissinger's barn that day, or in its vicinity, did you notice any of the chestnut logs about the barn?

A. No, sir; not on that day, to my recollection.

Cross-Q. 678. What kind of weather was it that day?

A. Well, it was cold weather. I know it didn't rain or snow. If there was rain or snow falling I didn't hunt any.

Cross-Q. 679. Was there any snow on the ground in the woods?

A. Yes, sir; in some parts of the woods—where the sun had been beating on it—it had melted away, or the most of it.

Cross-Q. 680. How do you fix that trip as in December, 1877?

A. I know it was near the end of the gunning season. That is all I have got to go by.

Cross-Q. 681. How long after that gunning trip were you next at Kissinger's place, or around his barn?

A. I can't bring to recollection. It might have been two weeks or it might have been six weeks.

Cross-Q. 682. Do you know what you were up there for at the next visit you made after the day you were gunning?

A. No, sir; I can't recollect.

Cross-Q. 683. Referring to this next visit after the day you were gunning, who, if anybody, was there at Kissinger's place with you?

A. I don't recollect of anybody being with me at the place at the next visit.

Cross-Q. 684. Whom did you see there at that time?

A. I must have seen Mr. Kissinger. I generally went up to see him. Or, perhaps, he wasn't at home. I can't recollect whether he was there at the first visit, or not.

Cross-Q. 685. You don't remember what you were down around the barn for at that time, do you?

A. I expect I went down to see whether Mr. Kissinger was there.

Cross-Q. 686. You saw the chestnut logs there at that time, did you?

A. I saw the chestnut logs there at one visit. Perhaps it was the first visit after I seen Mr. Kissinger at the hunting trip.

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Cross-Q. 687. Referring, now, to the first time that you ever saw the chestnut logs there, describe where they were, what quantity of them you saw, and in what condition they were.

A. Well, going from the house down to the barn they were to the right of the barn. It might be, to my best recollection, about twenty yards from the barn. There might have been in the neighborhood of eight. I don't know as I counted them. They had the bark off. Some of them were down, and some on trestles. There might have been one or more bored, and the auger was part-ways in one. No one was working on them when I saw them.

Cross-Q. 688. Did you ever see anybody boring logs there on Draper's farm?

A. Not to my recollection.

Cross-Q. 689. After you saw the logs at the time stated in your 67th answer did you ever see them again?

A. I do not know whether I saw them after that or not.

Cross-Q. 690. You never saw them before that, did you?

A. I don't think I did. I think the first time I saw them was when the auger was sticking in—and, I think, the last time.

Cross-Q. 691. When did you first see the ram there at Draper's farm?

A. I think it was on Draper's visit up there in 1878; I went up to the farm, and I rather think Mr. Kissinger and Mr. Draper were out at some of the neighbors, or had gone away somewhere.

Cross-Q. 692. What did you go up to the farm for at that time?

A. Well, I went up to see Mr. Kissinger and Mr. Draper. Perhaps it was about the ram; I don't recollect.

Cross-Q. 693. Whom did you see there that day?

A. Well, I saw some of Mr. Kissinger's folks; I rather think it was Mrs. Kissinger; I wouldn't say for certain.

Cross-Q. 694. Was the ram in operation?

A. Yes, sir.

Cross-Q. 695. Was it stoned up and boarded over?

A. I won't say about the stone part; there was some boards there, and, if I mistake not, there was some corn-fodder laid over the top; I didn't examine it; when I found they weren't at home I went away again.

Cross-Q. 696. Did you take off the cover and see the ram?

A. I think I did lift up one of the bundles of fodder, or either a board.

Cross-Q. 697. Was anybody up there with you that day?

A. No, sir; I was there that day by myself.

Cross-Q. 698. Did you ever know anything of Kissinger's getting out some logs and boring them, that were too small to be used for the ram, and consequently having afterwards to get out larger logs and bore them?

A. No, sir.

Cross-Q. 699. You don't know of your own knowledge whether such was the fact or not, do you?

A. No, sir; I know nothing about any that were too small.

Cross-Q. 700. Did you ever know anything about his getting out logs for the ram and boring them, and letting them lie until they had become weather-cracked, and consequently having afterwards to get out other logs and bore them for the ram?

A. No, sir; I know nothing about it.

Cross-Q. 701. How many times were you and your brother, Simon G. Eppler, ever at or around Kissinger's barn together while Kissinger occupied Draper's farm?

A. Well, we might have been there half a dozen times for what I know. I never kept no count. We were only there once, that I recollect of, that we had the guns with us.

Cross-Q. 702. Have you any definite recollection of being there with your brother, while Kissinger occupied the farm, at any other time than that once when you had the guns with you?

A. To be right at the barn, I recollect but once after that, and that was the day of Kissinger's sale; that day I know we were both at the barn.

Cross-Q. 703. My question referred to both at and around the barn—in the vicinity of the barn. With this explanation, please answer the question again.

A. He was with me one time; that is, what you might call near the barn—down where the waste water from the spring comes down, that didn't go into the piping of the ram.

Cross-Q. 704. When was that?

A. That might have been as late as 1879, to the best of my recollection.

Cross-Q. 705. Were you on a gunning expedition then, and if not, what was your business up there?

A. No, sir; we weren't going gunning. I think I went up to see Mr. Kissinger about some grain matter—about putting phosphate on the

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grain. I rather think Mr. Kissinger wanted some phosphate, and there was none there.

Cross-Q. 706. Was the ram in at that time?

A. Yes, sir.

Cross-Q. 707. Have you now stated all the occasions, of which you have any definite memory or knowledge, when you and your brother Simon together were at or in the immediate neighborhood of Draper's barn, while Kissinger was Draper's tenant? and if not please state any and all other occasions when you and your brother were there together, of which you have any definite knowledge or recollection.

A. Well, I can't say; I never kept no record of our visits to that barn—only that I know I came off of the mountain that day I was gunning, and my brother was along, and the day of the sale, and the day we were down where the run is—below the barn.

Cross-Q. 708. Those three occasions are all that you definitely remember being there with your brother while Kissinger was tenant, are they?

A. I can't bring no more to recollection; we might have been there other times.

Cross-Q. 709. Were you never there with your brother on gunning expeditions after the ram was put in?

A. We might have went across the farm when we went gunning or coming home from gunning; I don't know whether it was before the ram was in or after; I think we did cross the farm.

Cross-Q. 710. My question referred to being down at or in the vicinity of Kissinger's barn, and I will put the question again, in a little different form: Were you never down there at or in the vicinity of the barn or ram when with your brother Simon on a gunning expedition after the ram was in?

A. We were down there in the vicinity of the ram the time I spoke to Mr. Kissinger, or him to me, about the phosphate; I do not think that we had the guns with us; to the best of my recollection, my brother went up and looked at the ram; he went up that way; I did not see him look at the ram.

Cross-Q. 711. How do you know, then, that he went up and looked at the ram?

A. I wouldn't say positively that he looked at the ram; he went up that way, but I did not see him look at the ram.

Cross-Q. 712. You stated that, to the best of your recollection, he went

up and looked at the ram ; where, and from what, did you get that idea, that he went up and looked at the ram ?

[*Question objected to as a misstatement, the material part of the witness' sentence being omitted.*]

A. While Mr. Kissinger and I was talking, he walked in that direction where the ram was, until Mr. Kissinger and I was through talking, and then we started up towards the house, and went home. Perhaps he said he did look at the ram ; I ain't certain.

Cross-Q. 713. Fix the exact spot where you and Mr. Kissinger stood when your brother went up, as you say, in the direction of the ram.

A. Going from the house to the barn, we were to the right ; I think we were standing up against the fence below ; I judge it is fifty or seventy-five yards across there from the fence to where the ram is, to the best of my recollection.

Cross-Q. 714. And then you, and your brother, and Kissinger went up to the house together ?

A. To my recollection, I think Kissinger did go along up to the house ; my brother went along.

Cross-Q. 715. And from there, did you and your brother then return home by the valley road ?

A. Yes, sir ; to the best of my recollection we came down the valley road, as you call it.

Cross-Q. 716. In what year was that, and at what season of the year ?

A. It was along in the summer some time, before the watermelons was ripe ; I think it was in 1879, to my recollection ; he said if he had luck with his melons he would bring me a few down, or some down, for the watermelon seed I had given him.

Cross-Q. 717. I suppose that, within the last six months, you have had a talk with your brother Simon in regard to the time when you and your brother were down there at or near Kissinger's barn on the gunning trip, and in regard to the time when your brother left Mr. Kissinger and your standing talking together while he went to look at the ram ; am I correct ?

A. Well, I don't know as we did. We might have, when I was at Marysville, talked of it, but not, to my recollection, at any of my visits to Marysville.

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Cross-Q. 718. Do you mean to say that you have no recollection that, on any of your visits to Marysville since the first of January, 1884, you talked with your brother, Simon G. Eppler, about the gunning expedition on which you and he went down to Draper's barn, nor that you talked together about the time when that expedition took place, nor that you talked together about the occasion when he and you were there talking with Kissinger and your brother went up to look at the ram—no recollection of talking with him at Marysville about any of these things during the last six months?

A. I think I asked him one time whether he recollected the time we saw the timbers cut when he was along with me gunning. I think he answered me he recollected of it, but didn't mention when it was.

Cross-Q. 719. When and where was that conversation between you and your brother?

A. I don't know when; I have an idea we were in the shoe place up there when we spoke of it; it might have been outside somewhere. I don't know whether it was on one of my visits to Marysville since the 1st of January, 1884, or not.

Cross-Q. 720. Have you ever discussed that matter with your brother on any other occasion since the 1st of January, 1884, and down to the present moment, except that one occasion to which you refer in your last answer?

A. Only that one time, to my recollection, in any shape or form.

Cross-Q. 721. That one occasion, when you did discuss the matter with your brother, was at the time of your trip to Marysville, about March 26, 1884, was it not?

A. I can't recollect what trip it was. Perhaps it was on the March trip.

Cross-Q. 722. In that discussion, did not your brother tell you that the gunning expedition, when you and he went down to Kissinger's barn, was in 1876, and that he then saw the ram?

A. He told me that he thought I was wrong about the 1878; that he thinks it was back as far as 1876; and that is the way we got the timber business in. But I think the answer he gave me was that he didn't know who was wrong, and didn't care, either.

Cross-Q. 723. Didn't he tell you that he was positive that you were wrong, and that he was sure the gunning expedition was in 1876 when you saw the stumps and tops in the mountain woods, or in substance to that effect?

A. No, sir; he did not say anything about being sure of it.

Cross-Q. 724. You remember the conversation with him well, do you not, and remember what was said in it?

A. I don't remember the conversation very well, and I can't recollect when it was. He said, when I said 1878—if it was at that conversation—that he thought I was wrong, and then said he didn't know who was right or wrong, or something to that effect, and that he didn't care. I couldn't tell you the words as they were spoken there.

Cross-Q. 725. If you don't remember the conversation very well, how are you able to swear that he did not make the statements contained in my 723d question?

A. Well, he never told me that he was sure I was wrong; that I know.

Recess until 2.45, P. M.

Cross-Q. 726. Didn't your brother tell you in that conversation that the time when he was with you at the Draper farm, and left you and Kissinger talking while he went and looked at the ram, was in 1876?

A. He said it might have been in 1876, to the best of my recollection; I am almost certain that he said 1876, and at the same time—I have studied over it since—that I told him it couldn't have been 1876, that it was after I had become agent, and after we had seen the trees cut down, or the stumps where they were cut. To the best of my recollection, he said there was one or the other wrong, and I think he said he didn't care anything about it, or something to that effect.

Cross-Q. 727. I suppose you mean you have studied over it since testifying here this forenoon, do you?

A. Yes, sir; I was trying to bring to recollection on which of my visits to Marysville it occurred.

Cross-Q. 728. Have you talked with him or anybody else about it during the recess to-day?

A. No, sir.

Cross-Q. 729. He is still here at this hotel, is he not?

A. Yes, sir; he is here.

Cross-Q. 730. Have you heard any talk about it during the recess—that is, about the conversation which you had with your brother?

A. No, sir.

Cross-Q. 731. You have to-day told us about one conversation with

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your brother Simon in regard to the Draper-Kissinger ram; have you told us all that was said in that conversation by him and by you?

A. All I can bring to recollection.

Cross-Q. 732. Have you ever had any other conversation with your brother about the Draper-Kissinger ram at any ram since you saw Mr. Shireman at Baltimore?

A. Perhaps I have, but not to my recollection.

Cross-Q. 733. Have you had any other conversation with him at any time since Mr. Shireman visited you at Baltimore, with relation to the timber being cut or the time when it was cut?

A. I rather think we did talk of the timber one time, but I don't know if it was before Shireman was there or afterwards. I don't see that I would have had any occasion to talk about it before.

Cross-Q. 734. Where was that last-mentioned conversation?

A. I can't tell. I have got a kind of a recollection of having a conversation about it. It might have been at the shoe-house, or it might have been at his dwelling-house where he lived.

Cross-Q. 735. Tell us all you remember about that conversation.

A. I can't remember any of it. It might be that it was on one of the trips that I made up to Marysville since the first of January, for what I know.

Cross-Q. 736. When your brother notified you to come down here to Philadelphia, and came down here with you, didn't you have any conversation with him about the timber or the ram, on the way down here?

A. Not on the way down, to my recollection. I think I asked him at Marysville, after he told me that he had to come down, or was notified to come down, what he was coming down for, or what he was notified for, or something to that effect, and I think he told me that he had told somebody that he saw the stumps after the timber was cut.

Cross-Q. 737. Was that all the conversation that you had about it at that time? and if not, tell the remainder of it.

A. That is all that I recollect of it.

Cross-Q. 738. Now, do you remember any other conversation with your brother about the ram or timber, besides those three conversations that you have mentioned?

A. No, sir; I do not. I think two of them conversations out of the three is one conversation, to the best of my recollection. It might not have been.

Cross-Q. 739. Do you mean that there was one conversation between you and your brother about the ram or timber, so long ago that you cannot now say whether it was before or after Shireman's visit to you at Baltimore, that there was another conversation between you and your brother upon the same subject, at the time when your brother notified you to come down here, within the past three weeks, and that you do not remember any other conversation with your brother on that subject, except on those two occasions?

A. Well, I spoke to him the time we were in the woods about the timber being cut. That is the one that I think I was alluding to that was so far back. I know that we spoke of the timber once before, and I think that was the time.

Cross-Q. 740. You mean the conversation in the woods when you and your brother were gunning and saw the stumps, do you?

A. Yes, sir.

Cross-Q. 741. Referring to the "Exhibit Draper-Eppler Letter, December 18, 1877," I find in it this passage: "Kissinger could pay all his rents in improvements, if he would. The ram to throw up the water he was to put in, and the barn wants repairing." Wasn't the ram already in on the date of that letter?

A. No, sir; it was not. It was about that same time that I saw the timber cut—in the neighborhood of getting that letter.

Cross-Q. 742. You have mentioned several visits of Draper to Marysville while you were agent for him there; do you remember of him and Kissinger going up to look at a coal mine on any of those visits?

A. No, sir; I do not.

Cross-Q. 743. You never knew anything about their starting to visit a coal mine up on the Cove Mountain somewhere, did you?

A. No, sir; not to my recollection.

Cross-Q. 744. Tell us all the visits of Draper to Marysville that you can remember, from the first of January, 1877, to the first of April, 1880, and give us the time of each, as near as you can remember it, and any circumstances that will identify the particular visit and distinguish them from each other, stating particularly who came with him, if anybody.

A. He was there in the beginning of 1877—either January or February; I can't tell which of the two months; and he was up again in the same year, in November, and had his wife with him, and got a pair of shoes—in November—charged. He got them for his wife. I

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have no recollection of him being there in the spring of 1878, but some time in November he came up to the farm and told me his daughter had come there a few days ahead of him. I don't know whether he named the day, but something to that effect. In 1879 I have no recollection what time of the year he was up. In 1880 he was up at Kissinger's sale—in the spring of 1880.

Cross-Q. 745. When he was up in 1879, was any member of his family with him? If so, who?

A. I can't bring to recollection what time he was up, or whether there was anybody with him. I think it was along in the fall, to the best of my knowledge, and, perhaps, his son John might have been along. His son John was up one time. I didn't see his son. I think Mr. Kissinger told me that John was up to get some colts, or a colt. I can't recollect whether Mr. Draper was up at the same time or not.

Cross-Q. 746. Was Mr. Draper up more than once in 1879?

A. Not to my recollection.

Cross-Q. 747. How many colts or horses did Mr. Draper get from Mr. Kissinger during the time that you were agent?

[*Objected to as new matter.*]

A. I don't know whether there was two or three; they had them dealings among themselves; Mr. Draper, I think, wrote to me to tell Mr. Kissinger that he would give him so much more, or that he was to have so much more for one of the colts: I don't recollect what agreement Kissinger and I came to; I gave him the letter to read; and Kissinger said he wanted all his best stock, and I think that Mr. Kissinger got a letter from Mr. Draper himself then.

[*Respondents call upon complainants' counsel to produce and put in evidence the following original letters from Draper to this witness, which complainants' counsel have now in their possession, to wit: One dated November 13, 1879; one dated February 20, 1880; one dated March 22, 1880; one dated April 6, 1880, and one dated April 29, 1880.*

Complainants' counsel hand said letters to respondents' counsel.

Respondents' counsel puts said letters in evidence, to be marked as follows, to wit:

"	Exhibit-Draper-Eppler Letter,	Nov. 13, 1879.
"	"	Feb. 20, 1880.
"	"	March 22, 1880.
"	"	April 6, 1880.
"	"	April 24, 1880."

The letter of Nov. 13, 1879, is as follows:

"Magnolia, Nov. 13, 1879.

Mr. Herman J. Eppler,

Dear Sir,

inclosed I send you Mr. Kissinger's note and wish you would get him to renew it, and send it back to me. He didnt want it to go to the bank at Harrisburg, so I have taken it from our bank and it for renewal with a different kind of a note as there is no use in taking a Note in Bank. This one will be good for six years,

We got home all right with cur colts on Friday, and found all well. Wish you would try and sell that property.

Ever truly,

Thomas Draper.

The letter of Feb. 20, 1880, is as follows:

"Magnolia, Feb. 20, 1880.

Mr. Herman L. Eppler,

Dear Sir, on my return home from the city to-day I rec'd your letter stating that you had got no letter from me. I dont see how that is for I got your letter and answered it, but I got no card from you. I shall send a man up to take the farm. I expect to send up 10, ten cows, intend to start a milk dary. Mr. Kissinger must pay the *school tax*. He was to have the privilege of renting one part of the house to his son-in-law and pay the *schooltaxes*. He told me he would build that smoke house for Mr. Kline, and the spring house on the farm, and let it go on his notes, but I suppose he dont intend to do it. He wrote to me some time ago that I could have the other horse, if he didnt get a large farm, but I have not heard from him since. I would like to have him to match the one I have. I wish you would see him and let me hear at once what he is going to do before I buy other horses. I have bought one to-day and want one more. Try and get him for me if you can. I can come up or send for him, when I send up the cows. Where is Mr. Kissinger going. You may send me the \$30.00 that you have in hand. I have to set my son up to farming and need all the money I can get. Is the house where Meals lived rented, if not try and rent it, the windows will have to be filled up with glass, if Meals has not done it. I have not sold any part of the farm as yet, did not get a bargain with the man I wrote about last fall and I believe his property here is still idle. We may bargain some time this year yet: and I hope Mr. Kissinger may get a good situation, should hate to see him out of business, but I was anxious to sell and am yet, it is too much trouble for me to attend to a farm that far from home.

Please let me hear from you as soon as you can. We are all well as usual.

Ever truly,

Thomas Draper.

The letter of Mar. 22, 1880, is as follows:

"Magnolia, Mar 22, 1880,

Mr. H. J. Eppler,

Dear Sir, inclosed I send you two of Mr. Kissinger's notes With Statement of interest up to 19th inst

One Note	114.00
Interest 1 year four months	9.12
One Note	100.00

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Interest 1 year 4 months	\$8.00
	<hr/>
	\$231.12
Credit by Horse	150.00
	<hr/>
	\$ 81.12

leaving a balance of eightyone dollars and twelve cents due me. Now the work he has done since we last settled is to come out of that, so I want you to settle fair with him allow him everything that is fair and honorable, as to the School taxes his son in law was to pay all of them for his house rent and fire-wood and I think he got a better bargain than he will ever get again. We got home with our horse on Sunday, found all well Mr. Lewis will start up to-morrow, expects to get there about Saturday night.

Evertruly

Thomas Draper.

The letter of April 6, 1880, is as follows :

"Magnolia, Apl. 6th, 1880.

Mr. H. J. Eppler

Dr Sir yours containing statements recd. and all satisfactory except the allowance to Mr. Kissinger about the *House taxes* that was not correct. When Mr. Kissinger gave me those notes, I paid him all the taxes that was due up to that time, some of them he had paid a part on and said he would pay the balance so I settled it up with him and then he owed me so much that he seemed so down harted, that I took off sixty or seventy Dollars as I think you recollect, for it was done in your office. I hope he may do better at Easton. Please give Mr. Lewis all the assistance you can. Would like to see things put in order as fast as you can get anything to do it with, have the glazing and plastering done but be sure and save your own money. Give my respects to Mr. Lewis & Family tell him to write me a long letter and tell me all about his trip up and how they all like things generally, tell him by all means to put his peach orchard in order soon.

My colts are looking fine. We are all well.

Ever truly Thomas Draper."

The letter of April 24, 1880, is as follows :

"Magnolia, Apl. 24th, 1880.

Mr. Herman J. Eppler.

Dear Sir yours recd. stating that Mr. Seydell had concluded to take the wood leaf that he and I were talking about. I am willing for him to have it, provided he will have it surveyed and give his check for the money, he must pay the surveyor, and he can have untill April 1st, 1881 to take of the wood, if Mr. Lewis wants lime this spring perhaps you had as well get it for him, I will send three or four tons of Phosphate if I can get a vessell to take it to Philad. Mr. Kissinger had no orders from me to cut any hoop poles, only on shairs one-half was to be mine if he cut any. He said he did not know that he would cut any. He also

owes me for $\frac{1}{2}$ ton Phosphate sent to him last spring. I sent one ton he was to pay for one-half of it, at \$25 per ton.

I noticed that from your statement that I had already allowed him for a part of those taxes in our last settlement, when he gave me the Notes, but it will all work out right in the end.

"Ever truly Thomas Draper."]

Re-direct by Mr. Storrow:

Q: Q. 748. Did you receive any written communications from the J. H. Shireman spoken of in your cross-examination? If so will you please produce them?

A. Yes, sir.

[Witness produces three postal cards which are marked: "J. H. Shireman's Postal Cards," and are as follows:

"York, Pa., Jan. 1, 1883.

Dr. Sir please let me know by return mail whether you found the receipt in payment for the hogs you told me about and also about the man that was along with you at the time as to whether he remembered something about it and all that you have found out about our case since seen you.

Yours truly,

J. H. Shireman."

This card is addressed "Mr. H. J. Eppler, 131 Valey street, Baltimore, Md.," and is post-marked "York, Pa., Jan. 1."

The next card is as follows:

"York, Pa., March 8, 1883.

Dr. Sir I would like to see you shortly to have a conversation with you on the telephone matter are you about home now generally lets hear from you by return mail by so doing you will oblige.

Yours truly,

J. H. Shireman."

This card as addressed "Mr. H. J. Eppler, 131 Valey St., Baltimore, Md.," and is post-marked "March 8," at some place in Pennsylvania which is illegible.

The third is as follows:

"York, Pa., March 20. 1883.

Dr. Sir I wrote to you some 10 days ago that I would like to see you soon and should let me know when I can see you at home and up to this writing no answer please lets hear from you by return mail.

Yours truly, J. H. Shireman."

This postal card is addressed "Mr. H. J. Eppler, 131 Valey St., Baltimore, Md.," and is post-marked "York, Pa., March 20, 3, P. M."

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Q. Q. 749. Please look at this letter and state in whose handwriting is the body of the letter, and in whose handwriting is the signature.

[*Objected to as incomplete unless the envelope or inclosure in which it was forwarded, if it was forwarded, be produced with it and identified.*

Complainants' counsel produces envelope in which he received said letter, and states that the red ink writing on the envelope has been put on since it was received.]

A. It is my handwriting—signature and all.

Q. Q. 750. Is this or is it not the letter referred to in your 164th cross answer, as “a letter or a postal to J. J. Storrow, that I had found, or that there was found another letter, concerning the Draper farm, and that it mentioned the ram”?

A. Yes, sir; that is the letter.

Q. Q. 751. The first clause in the letter referred to is “inclosed find postal I spoke of;” what postal did you inclose in that?

A. A postal card from Mr. Shireman; I had told Mr. Storrow that his name was “Shirely;” to make sure what the name was I told him I would send the postal card I had got from him.

Q. Q. 752. Look at the envelope just produced by complainants' counsel in response to the last objection, and state whether the address is in your handwriting; and if not, state whose handwriting it is in if you know.

A. It is not my handwriting. Mr. Comfort put the directions on the envelope at Harrisburg, with instructions to put the postal card in that I had reference to when I was at Harrisburg.

Q. Q. 753. Will you state whether or not your letter of February 2d, and the postal card referred to, were sent in that envelope?

A. Yes, sir; both of them—the card and the letter.

[*Letter and envelope put in evidence, as follows:*

“Baltimore, Feb. 2nd, '83.

Mr. Storrow

Dr. Sir enclosed find postal I spoke of I wish you to return it to me again as I mean to keep all papers hereafter.

Sir on my arrival home I looked over more papers and found the agreement of Draper to Kissinger dated Dec. 4, '77 also one letter dated Dec. 18, '77 this letter mentioned the ram to be put in I thought I would mention this to you although I do not know what is in the letters you have as I read none of them since I put them up in the package as you got them I think I had better hold on to the agreement and letter as there might perhaps be some trouble concerning the payment of the ram.

Sir sometime when you come to Baltimore I will show them to you I will do the right thing with you if it does not bring me into Paying for the ram I do not know wether it is Paid or not but I know that Paying bills is a hard matter for some parties.

Respect.

H. J. Eppler,
131 Valley St., Balt."

The envelope is addressed "J. J. Storrow, Esq., Box 271, Harrisburg, Pa.," and is post-marked "Baltimore, Md., Feb. 2, 5 P. M.," and received at "Harrisburg, Pa., Feb. 3, 4 A. M."]

Q. Q. 754. Please look at the letter and envelope now shown you, and state in whose handwriting they are in.

A. The writing is mine and the signature.

Q. Q. 755. Was that letter written and sent in consequence of Mr. Hill's first visit to you, referred to in your cross-examination?

A. Yes, sir.

[*The letter and envelope are put in evidence, and are as follows:*

"Balto. June 7th, 83.

"Mr. J J Storrow,

Sir, I wish you would return those letters and Book that you got from me as Mr Draper and My self have not Settled yet.

I would like to have the Letters to Show the oppisite about the ram
Please return them soon if you have coped them
and oblige

H J Eppler

131 Valley St

Blto Md

Envelope: (Postmark) Baltimore Jan 7, 5 P. M.

Md. "If not called for in 10 days return to H J Eppler, Grocer and Commission Merchant, shipper of Fruits, Vegetables, Oysters, Fish, etc. Baltimore Md. 131 Valley St. (No. 80 Dolphin Street, Corner John—erased)

Mr. J J Storrow,
Boston, Mass.

(Postmark) Boston, Mass. June (Stamp—3 c)"

Q. Q. 756. Look at the paper now shown you and state whose signature is to it; and, if the body of the paper was written in your presence, state who wrote it.

A. It is my signature, and the body of it was written by Mr. Comfort, in my shoe-place at Baltimore.

Q. Q. 757. Was this paper written and signed between Mr. Hill's two visits, referred to in your cross-examination?

A. Yes, sir; Mr. Comfort was there between his two visits; he wrote the paper and I signed it.

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Q. Q. 758. It acknowledges the receipt of twenty dollars; did Mr. Comfort pay you that sum when you signed it, or not?

A. Yes, sir; he gave me a twenty-dollar bill.

Q. Q. 759. Is that the twenty dollars referred to in your 312th cross-answer (p. 2214)?

A. Yes, sir.

[*The paper is put in evidence marked "Eppler Receipt, June 20, 1883," and is as follows:*

"Baltimore, Md., June 20, 1883.

Received of J. J. Storrow Twenty Dollars for certain papers and letters of Thomas Draper's which are to be produced in court if needed in the case of the Am. Bell Tel. Co. vs. The Peoples Tel. Co. and afterwards to be the property of the Am. Bell Tel. Co.

H. J. EPPLER"]

Q. Q. 760. Look at the paper now shown you, and state in whose handwriting is the signature "H. J. Eppler," and if the body of the paper, written in purple ink, was written in your presence, state who wrote it, and where it was written.

[*Objected to as a paper not referred to in the cross-examination either by the witness or the examining counsel, and because it is incompetent for the complainants to attempt to corroborate their witness by means of private ex parte affidavits, procured by them from him beforehand; and further, because it is immaterial and irrelevant—this objection to apply to the paper if offered in evidence.*

Complainants' counsel replies that the matter of the three interviews of June, 1883, was first opened on the cross-examination, and the paper is, therefore, now competent.]

A. That is my own signature and Mr. Comfort's writing. It was written in my shoe-place in Baltimore.

Q. Q. 761. Did you sign and swear to it in your shoe place, or did you go to the commissioner's office for that purpose?

A. No, sir; we went over to Lexington, or St. Paul, street to a commissioner, and I signed it and swore to it.

Q. Q. 762. Was that written, signed, and sworn to on the same day as the receipt of June 20, 1883, or not?

A. Yes, sir; the same day.

[*Paper put in evidence marked "Exhibit Eppler Affidavit, June 20, 1883." It is as follows:*

"Baltimore, Md., June 20, 1883,

I took charge of the Draper farm situated near Marysville, Perry county, Pa., in the spring of 1877—it was the farm occupied by Geo. W. Kissinger, (as tenant.) Some time in the fall of 1877, Mr. Thos. Draper, (owner of the farm,) and Mr. Kissinger called at my store in Marysville, Pa., on their way to Eberly's Mills. Mr. Draper said he had concluded to put in a ram on his farm, and that they were going over to see if Mr. Drawbaugh, if he had any, or could furnish one. When I took charge of the farm as agent there was no ram on the farm, nor any logs or pipes prepared to put one in. I am positive the timber was cut for the wooden pipes late in the fall of 1877.

This affidavit is given for legal purposes only.

Subscribed and sworn to before me, this 20th day of June, 1883.

G. EVETT REARDON,

A Commissioner for Pennsylvania in the State of Maryland, residing at Baltimore City.

H. J. EPPLER.

Seal of G. Evett Reardon, a Commissioner of the State of Pennsylvania, in the State of Maryland, Baltimore, Md."

The affidavit is written in purple ink through the paragraph ending with the words "fall of 1877;" the remaining written words, including the signatures, are in black ink, and the formal parts of the jurat are stamped in purple.

At complainants' request the Examiner now copies in "Exhibit Eppler Order," from page 2217 supra, as follows:

"Baltimore, Md., June 27, 1883,

J. J. Storrow, Esq., 40 State St., Boston, Mass. Dear Sir. Please permit Lysander Hill, Esq., to see and take copies of all the papers and the book which you and Mr. J. C. Comfort obtained from me during the past six months.

H. J. Eppler."

Complainants' counsel states that the week after the date of that order respondents' counsel, Mr. Hill, came to him and said that Mr. Eppler had told him that complainants' counsel had some letters and papers which they had received from Eppler relating to the Draper farm, and that he desired to see them, whereupon the same were shown to him and copies taken. The papers so shown were nineteen letters, the Draper-Eppler power of attorney of March 8, 1877, and the Draper-Kissinger agreement of December 4, 1877; said nineteen letters include all the Draper letters put in evidence in this deposition.]

Recess until 8, P. M.

The following and subsequent questions are put de bene esse:

Q. Q. 763. In your cross-examination you were asked about a visit to Milltown with a certain Mr. Sadler to a certain shop; and you were asked what you saw there. I refer more especially to your cross-question.

and answers 84, 85, 86, 87, and 275, and others relating to the same subject. Will you please state and describe, according to your best recollection, what it was that you saw at the shop at Milltown when you made the visit with Mr. Sadler?

A. I went with Mr. Sadler to Milltown; he said he was going to Drawbaugh's shop; I went in with him; Mr. Sadler and Mr. Drawbaugh, as he called him—I didn't know the gentleman—were talking; then he showed him a box and a bowl or cup; the box seemed to me as though it was a segar-box; there was a hole in the box; a string run through and tied to a stick; the string run to the bowl or cup; there was no molding, or casing, or whatever you may call it, on the bowl; I do not know how the bowl was fixed inside; it was not shown to me; it was shown to Mr. Sadler, and I was looking on; there was part of a wagon there—wagon-wheels—that was repaired.

Q. Q. 764. You say the string was fastened to a stick. State, if you remember, more particularly how the stick was used to fasten the string—how it was arranged.

A. A string ran through the bottom of the box, and the string was tied to the center of a stick that was two or three inches long, or maybe not so long—say two inches—to the best of my recollection. And when he spoke to Mr. Sadler, I think he called it a speaking-trumpet.

Q. Q. 765. You have said that you saw there a man whom he called Mr. Drawbaugh. Several persons of that name have lived in Milltown for a great many years. Do you know the first name of the Mr. Drawbaugh whom you saw that day?

A. No, sir; he was only called Drawbaugh, or Mr. Drawbaugh.

Q. Q. 766. Mr. Daniel Drawbaugh has been present in the room during the greater part of your examination. Did this Mr. Daniel Drawbaugh come to see you at Baltimore last summer, with Mr. Hill, the first time Mr. Hill came to see you?

A. Yes, sir.

Q. Q. 767. Is this Mr. Daniel Drawbaugh the man whom you saw, and who was called Drawbaugh, when you visited Milltown with Mr. Sadler?

A. No, sir; he told me at Baltimore that it must have been John or his son—now I don't know which of the two he said—that I had seen at Milltown.

Q. Q. 768. When did that Mr. Sadler die?

A. To the best of my recollection it was in 1880.

Q. Q. 769. After seeing at Milltown, on that visit with Mr. Sadler,

the contrivance you have described, did you make anything, or undertake to make anything, in consequence of what you had seen that day?

[*Objected to—first, as leading, and secondly, as immaterial and irrelevant, it appearing from the testimony of the witness himself that he did not see Mr. Daniel Drawbaugh at Milltown; that he did not examine the contrivance which he says he saw there, and it not appearing that Mr. Daniel Drawbaugh had anything in the world to do with that contrivance, or ever even knew of its existence.*]

A. Yes, sir. Some time after I went home I took a segar-box, cut a hole in it, put a string through and fastened the string to a stick by the center—had the box in a little summer-house in the yard; I ran the string over to the house, to a post—I took it off of the post, then, and run it through the key-hole of the door. Then I had no one to listen to it, and I asked my wife to listen whether she could hear anything, and she wouldn't. She said she thought I was going crazy. Then I took it down, and had nothing more to do with it.

Q. Q. 770. Before you made that contrivance, had you, or not, ever seen or heard of anything of that kind, except what you saw at Milltown when you were there with Mr. Sadler?

[*Same objection*]

A. No, sir.

Q. Q. 771. You have been inquired of, in your 84th cross- and other questions, as to what you told Mr. Storrow about your visit with Sadler: did you, or not, when you first told him of that visit, tell him of the contrivance you made after you got home, as you have just described?

[*Same objection.*]

A. Yes, sir; I told him of the contrivance.

Q. Q. 772. In your 83d and 93d and intervening cross-questions, you were asked about Mr. Storrow taking you over to Milltown in a buggy, early last year, to point out where the shop was that you went to with Sadler. I wish you would state more fully what took place on that drive, after you got to Milltown, what road you took after you reached the grist-mill, who pointed out what road should be taken, and what you did about pointing out where that shop was.

[*Same objection.*]

A. When we got to the grist-mill, Mr. Storrow asked me which road now—or which way we turned when we got there—"Up the hill to

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the right," I said. He drove right along, and didn't stop, nor didn't speak, and when I got up the hill part ways I pointed out to Mr. Storrow the place I was at with Mr. Sadler. "But," says I, "there is no shop there now." There was nothing more said. 'We drove on out past Milltown perhaps a quarter or a half a mile, came back to Milltown, and he drove me down past Eberly's Mill, or a stone mill, and turned around when he got down to the end of it, at a—clover-mill—I don't recollect how he called it, but I think it was the end of the street, though—or wilderness. He asked me, then, whether that was the place I was at. I told him "No, sir;" that I had never been down there. I rather think that I told Mr. Storrow that I didn't know that there was such a place in existence.

[At the suggestion of respondents' counsel, complainants' counsel states that the place last referred to, which the witness says he had never been at, was Daniel Drawbaugh's machine-shop, formerly the clover-mill, and that the place which the witness pointed out as the place which he had visited with Sadler, was the place which is marked "W. S." on the plan of Milltown and which has not been in any way connected with Daniel Drawbaugh by the evidence.]

Adjourned until May 22, 1884, at 10, A. M.

MAY 22, 1884, 10, A. M.

Examination resumed.

Present, same counsel, and also Mr. Church for respondents.

Re-direct examination of Herman J. Eppler by Mr. Storrow continued:

Q. Q. 773. Mention has been made of a smoke-house for the tenant-house and lot owned by Mr. Draper and leased to Kline, and about Mr. Kissinger's having something to do with it; did Mr. Kissinger ever build a smoke-house on that Kline tenant property, or what did he do about it?

A. He put the frame up, and the weather boarding on three sides, and part of the fourth, to where the door-frame was to go in. He had no wall under it, nor floor in it, and no roof on it.

Q. Q. 774. I call your attention to the occasion spoken of in your cross-examination, when you and Mr. Comfort and Mr. Storrow went together to Marysville, and you looked over some papers, and gave Mr. Storrow some letters, which he took away. Do you remember whether, while at your brother's store on that occasion, you counted the letters which Mr. Storrow took away?

A. Yes, sir; I counted them.

Q. Q. 775. Do you remember whether or not on that occasion, Mr. Storrow wrote on the envelope, in which they were placed, the number of the letters which you counted and he took away?

A. Yes, sir.

Q. Q. 776. Please look at the envelope now shown you, which has the word "seven" written on its back in pencil, and in Mr. Storrow's handwriting, and state whether or not, to the best of your knowledge and recollection, that is or is not the envelope in which those letters were taken away and on which Mr. Storrow then wrote the number of them.

A. Yes, sir, that is the envelope he got at my place along with the letters. I saw Mr. Storrow put the word "seven" on it on his visit to Marysville with Mr. Comfort and myself.

[Envelope put in evidence and is as follows:

[Postmark] "Magnolia Dec. 26, Del.

Herman J. Eppler, Esq., Marysville, Penna'.

[Stamp] U. S. Postage, three [3] cents."

[Other side of envelope, in pencil,] "seven."]

Q. Q. 777. In whose handwriting is the address on that envelope?

A. Mr. Thomas Draper's, to the best of my knowledge.

Q. Q. 778. In your cross-answer 354 and elsewhere, you mention talking to a man by the name of Stevens from Harrisburg; was that man David Stevenson, a machinist from Harrisburg?

[Objected to as leading and as suggesting to the witness to alter his testimony by substituting a different name for that which he has already sworn to.]

A. He told me he was Stevens from Harrisburg, and said that he was a machinist. He might have said "David." I don't recollect.

Q. Q. 779. Where were you and what were you doing when he told you this?

A. I was at the back end of one of my lots, and had a man digging a pit to set the water-closet over.

Q. Q. 780. Did he come to you and first make mention of a ram to you, or did you first make mention of the ram to him?

A. No, sir, he came to me and made mention of the ram. He said he was working for Miley at one time, and had lost his book or papers, and would like to get some date.

Q. Q. 781. In your 168th cross-answer you said that when Mr. Storrow had you in Philadelphia, in February or March, 1883, he

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showed you some boxes, and asked you if you had ever seen any of them, or any like them, and you said that you had seen something like one of them. The Examiner will now show you all the instruments which have been put into the case by Drawbaugh as exhibits, and I ask you whether you ever saw any of them, or any like them, before you came to Philadelphia last year ?

[Objected to as new matter, and as immaterial and irrelevant.]

Examiner shows witness all the Drawbaugh exhibits, all of which are contained in a box or trunk in the room.]

A. None of them the Examiner showed me in the box or trunk.

Q. Q. 782. Look at the instrument now shown you, and state whether Mr. Storrow showed you, at Philadelphia, in February or March, 1883, this instrument, or one like it.

[Objected to on the ground that the question inquires for new matter; secondly, that the so-called instrument now produced by complainants' counsel has no connection whatever with Daniel Drawbaugh, nor with the case; and thirdly, because said so-called instrument is evidently not even the original instrument which the witness says he saw at Milltown in 1874, but a contrivance having no relation to the subject-matter of this suit, and apparently gotten up to mislead and confuse the Court.]

Complainants object to the statements of the objection as without any foundation in fact or in the evidence.]

A. This is the instrument I saw at Philadelphia.

Q. Q. 783. In your 168th cross-answer, referring to the instruments shown you by Mr. Storrow, at Philadelphia, you said: "I saw one box that I had an idea that I did see, or something like it." Is this the box shown you by Mr. Storrow, and which you refer to as being something like something you had seen before?

[Same objection.]

A. Yes, sir; that is the box.

[Instrument put in evidence, marked "Complts' Exhibit String Telephone."]

At the suggestion of defendants' counsel, complainants' counsel states that the instrument "Exhibit String Telephone," is an instrument which happened to be in his possession before he ever saw Mr. Eppler, and he has no reason to believe that it was ever in Milltown, or ever seen by Mr. Daniel Drawbaugh before to-day. He introduces it in evidence in consequence of the reference in the 168th cross-answer.

The so-called instrument objected to as utterly immaterial, irrelevant, and incompetent for any purpose of evidence in this case.]

Re-cross by Mr. Hill, de bene esse:

Re-cross-Q. 784. Referring to "Exhibit Eppler Receipt June 20, 1883," if I understand you correctly this receipt was given by you to Mr. Comfort on the day of its date, which was between the two visits of Mr. Hill to you at Baltimore; am I correct?

A. Yes, sir.

Re-cross-Q. 785. When you gave Mr. Comfort this receipt, Mr. Storow was not present, was he?

A. No, sir.

Re-cross-Q. 786. And on the day when you gave Mr. Comfort this receipt, the papers and letters referred to in it were not present in Baltimore, but were in the possession of Mr. Storow at Boston; is that the fact?

A. Yes, sir.

Re-cross-Q. 787. This receipt amounts to an agreement on your part as to the future ownership and control of the papers and letters referred to in it; is this the only written agreement that you ever entered into with Mr. Storow or Mr. Comfort in regard to the ownership, or control, or use, of said papers and letters?

A. That is the only receipt I gave him for money paid me for the use of the letters.

[Answer objected to as not responsive, and question repeated.]

A. If I understand the question right it is the only one; I have signed others papers or letters—put my signature to it—to J. J. Storow or Comfort, whichever they were directed to.

Re-cross-Q. 788. Did you ever sign any other written agreement to the effect that they were to have the letters and papers, or any of them, until through, and then return them to you?

A. Not to my recollection; I think that was a verbal contract between us, that I was to have the letters back.

Re-cross-Q. 789. For how long a time before your wife's death was she such an invalid that you were, in consequence of it, constantly worried and care-worn, and suffering from loss of sleep?

A. In the neighborhood of four months, that she was so that I had to lift her in and out of the bed.

Re-cross-Q. 790. You have stated, in substance, that when Mr. Hill visited you on June 27, 1883, you were so worried, and had lost so much sleep in consequence of your wife's condition, that you didn't care, or pay

much attention to what was said during your interview with Mr. Hill; for how long prior to Mr. Hill's said visit had you been in that condition of worriment and loss of sleep?

A. I can't tell; I have got no date for it; it might have been a week or two weeks.

Re-cross-Q. 791. Give us your best recollection. Did it extend as far back as Mr. Hill's first visit to you, about a month or six weeks prior to his second visit?

A. I cannot tell. I had a girl there taking care of my wife for some time, but I can't tell when she left, and after that I had to stay with her mostly at night, or altogether.

Re-cross-Q. 792. Then you can't tell whether you were in that condition of worriment and loss of sleep when Mr. Hill first visited you; is that the fact?

A. Yes, sir; I had lost sleep when Mr. Hill was there the first time; and I was worried—about as much so as when he was there the last time—and from that on until the death of my wife.

Re-cross-Q. 793. When Mr. Shireman had his two interviews with you, or either of them, were you worried a great deal and suffering from loss of sleep so that you didn't care or pay much attention to anything that you said to him?

A. No, sir; I had my rest pretty regular then; my wife wasn't bed-fast at the time.

Re-cross-Q. 794. In your re-direct answer 752, you say that the address on the envelope is not in your handwriting, and that Mr. Comfort put the address on the envelope at Harrisburg; inasmuch as the letter was dated, and the envelope posted at Baltimore, will you explain when and why Mr. Comfort directed the envelope at Harrisburg?

A. In the latter part of January, when I was up to see Mr. Comfort and Mr. Storrow, on our trip to Marysville, and when I told them there was a man to see me by the name of "Shirely," as I called him; I told them to make sure I would send them a postal card with the name on it, as they seemed to want to find out the right name. Then Mr. Comfort directed the envelope, and told me to put the postal card in there and send it to them.

Re-cross-Q. 795. Did you ever answer any of Mr. Shireman's three postal cards that have been put in evidence here? If so, which?

A. I answered the one dated "Jan. 1, 1883," to the best of my knowledge.

Re-cross-Q. 796. How long did Mr. Comfort put the address on the February 2d envelope before you mailed the envelope to Mr. Storrow?

A. I think it was two or three days; it might be four days.

Re-cross-Q. 797. At the time when Mr. Comfort addressed that envelope, had you and Mr. Storrow and Mr. Comfort already been at Marysville together on the occasion of your giving the letter and papers at Marysville to Mr. Storrow?

A. Yes, sir; it was after we came from Marysville—after we had been there—that he addressed it.

Re-cross-Q. 798. How long after?

A. The same day.

Re-cross-Q. 799. I wish to ask you a further question about that entry in your store-book at Marysville relating to the sale of the pair of shoes for Mrs. Draper; when did you find that entry, and call Mr. Comfort's or Mr. Storrow's attention to it?

A. Well, I had the book, that it was in the back part of, in my possession all the time I was at Baltimore. I don't know when I—I might have seen it every year, for what I know, or every month, in looking over it. It is since the first of January, 1884, some time, that I took it out of the book. I had it in my account-book in my pocket. I think I gave it to Mr. Comfort at one time.

Re-cross-Q. 800. Gave it to Mr. Comfort before, or after you first showed it to Mr. Storrow?

A. I don't think I showed it to Mr. Storrow at all.

Re-cross-Q. 801. How long did Mr. Comfort have it in his possession?

A. I could not tell. I gave it to Mr. Comfort, to the best of my recollection, since the first of April, 1884.

Re-cross-Q. 802. And have you had it in your possession since—if so, how long?

A. Only at the time it was handed to me here, to look at, during my examination.

Re-cross-Q. 803. Did you ever show that paper to Mr. Draper?

A. No, sir; not to my recollection.

Re-cross-Q. 804. Have you been to Delaware to see Mr. Draper about this case since the 1st of January, 1884?

A. No, sir; I haven't seen Mr. Draper for over two years.

Re-cross-Q. 805. Did Mr. Comfort pay you anything for that sheet of paper when you gave it to him, or deposit any security for its return?

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A. No, sir.

Recess until 2.30, P. M.

[Respondents' counsel states that he is through with the cross-examination of this witness.]

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me this 22d day of May, A. D. 1884.

FRED. M. OTT,
Examiner.

HERMAN J. EPPLER

[Respondents' counsel finds upon page 2147 of complainants' printed record, a statement from complainants' counsel, dated May 13th, 1884, that complainants' counsel thought it proper, at that time, that six or eight more witnesses should be examined in complainants' behalf. Since that time two witnesses have been examined, the examination of both of said witnesses coming within the stipulation printed on page 1140 of defendants' printed sur-rebutting testimony, under which stipulation the complainants' testimony in rejoinder has been taken.

Respondents are now informed by complainants' counsel that although the period mentioned by said last-mentioned stipulation has expired, yet the complainants propose to go on with their testimony in rejoinder to the extent of taking the testimony of six or eight witnesses.

Respondents' counsel object to the examination of any further witnesses in rejoinder, under the circumstances above stated, for the reason that the complainants' time for taking testimony in rejoinder has expired; and give notice that they shall rely upon this objection, and shall move to strike out any testimony that may be so taken; and they further protest against the proceeding as totally unwarranted, irregular, and illegal.

But, as complainants' counsel still propose to go on with the taking of such testimony, notwithstanding this objection and protest, respondents' counsel announce that they shall, or some of them will, remain present and cross-examine any of such witnesses as may be produced, subject, at all times, to the objections herein-above stated, and without waiving said objections, or any of them. And, as complainants' counsel express a desire to employ an additional examiner, and proceed with two sessions at the same time, in adjoining rooms, respondents' counsel will attend on both examinations, making no objections to the duplication of the proceeding,

but without waiving the above objection to the continuance of the proceeding at all.

The complainants' counsel refer to the facts already noticed, on page 2147 of this record; to the further fact, appearing on the record since that page, and to the further fact that since the morning of May 16th they have had another examiner in attendance, and have asked the defendants' counsel to attend on two examinations, in adjoining rooms, which the defendants' counsel have declined to do up to this day; and complainants' counsel insist that they have the right to complete their testimony, and will now go on with two examiners.

By consent, Joshua R. Morgan, Notary Public, of Philadelphia, is appointed Special Examiner to take testimony in one of said adjoining rooms.

FRED. M. OTT, *Examiner.*

The following stipulation of counsel is signed before me, this 22d day of May, 1884, and ordered to be placed upon the record:

FRED. M. OTT, *Examiner.*

The defendants wish to take proofs in rebuttal of complainants' rejoinder.

Complainants insist that the defendants have no right so to do, because no time has been assigned for that purpose, and because the complainants have the right to close the case; and further, that the respondents ought not to, and cannot, obtain any time for that purpose without consenting to the completion of complainants' testimony, as desired.

Nevertheless, subject to the legal effect of all objections on both sides, and without waiving them, the parties agree as follows:

The defendants to take and complete such testimony in rebuttal of the rejoinder within twenty days from the closing of the complainants' rejoinder; the case to be heard at such time and place, in or out of the district, after the expiration of thirty days from the closing of the testimony, as the Court may at any time fix, upon the application of either party and reasonable notice of such application to the other. The complainants, however, do not preclude themselves from taking testimony in rebuttal of any evidence hereafter offered by respondents, if there shall be lawful occasion so to do, nor do the respondents hereby consent to the complainants taking such last-mentioned testimony, except as they may obtain time therefor by stipulation or by order of the Court.

J. J. STORROW, for Complainants.

L. HILL, for Respondents.]

GEORGE LEONARD, being produced, sworn, and examined, saith:

Examined by Mr. Storrow:

Q. 1. Are you the same George Leonard who was examined as a witness on behalf of the respondents, (see respondents' printed record, page 725,) and who was afterwards examined as a witness on behalf of complainants, (see complainants' printed record, page 1199.)

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A. Yes, sir.

Q. 2. I have asked you to read, in the deposition of Michael Natcher, (defendants' sur-rebuttal, pages 136, 7, and 8,) particularly the questions and answers 4, 5, 6, and 14; have you done so?

[Questions read to witness.]

A. I had read them, and I heard you read them here; I understand them.

Q. 3. Are you the Mr. Leonard who owned the grist-mill at Eberly's Mills, and for whom William Natcher was miller in 1871-2?

A. Yes, sir, I was the man who owned the mill at the time.

Q. 4. Did you ever say to either of the Natchers, or in their presence, that Drawbaugh had a talking-machine, and that one of them ought be put in from the mill to the house, or anything to that effect?

[Objected to as leading.]

A. No, sir; I never did to no living person, because I knew nothing about it at that time.

Cross-examined by Mr. Hill, de bene esse:

Cross-Q. 5. I suppose that you mean to say that you have no recollection of the talking-machine at that time, or of your speaking to Natcher about it; that is what you mean, is it?

A. Yes, sir, at that time; that was the first year that I was there. I don't know that I ever heard anything about it while they were there with me.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
22d day of May, 1884.

FRED. M. OTT,

Examiner.

GEORGE LEONARD.

LEONARD SWARTZ, *being produced, sworn, and examined, saith:*

Examined by Mr. Smith:

Q. 1. Were you examined as a witness on behalf of the defendants in this case on the 8th and 9th days of January last?

A. Yes, sir.

Q. 2. You were asked in the 36th interrogatory, (on page 686 of the defendants' printed record in sur-rebuttal,) when you first knew of Mr. Kissinger's boring those wooden pipes on the Draper farm, and you an-

swered, "In the spring of 1875." What is your recollection and belief, at the present time, about having knowledge of the boring of the pipes at that time?

[*Objected to as incompetent, and as an improper mode of inquiry.*]

A. My knowledge and belief now is that I was mistaken in the time.

Q. 3. State whether or not you saw Mr. Kissinger's ram after it was in operation; and if so, what the occasion was of your seeing it.

A. Well, I butchered there some time about the latter part of November, or maybe the first of December, and saw the ram in operation.

Q. 4. Can you state what year that was?

A. No, sir; I can't tell.

Q. 5. Did you make any examination of the ram on that occasion; if so, will you describe what you saw?

A. I saw the water running out at the house, and afterwards went down and looked into the pit, and was anxious to see how it threw the water up. As I didn't know but very little about the workings of the ram, I was anxious to see how it worked and how it forced the water up.

Q. 6. Will you describe the appearance of the pit and the ram, and the size of the pit, as you remember it?

A. The pit was about four foot square, and, I should suppose, about three or four feet deep—walled up. I can't say that I saw very much of the ram. I heard the snapping and gurgling, and so forth, and saw something in the water. I can't describe just how it looked.

Q. 7. You say that the occasion when you saw the ram was when you were butchering hogs, and that it was about the latter part of November or first of December. How are you able to fix upon that as the time of the year when you first saw the ram?

A. As he helped me, and I helped him back, in butchering; and ever since I keep house I am in the habit of doing our regular fall butchering about that time.

Q. 8. In the 37th interrogatory, in your former deposition, you were asked if there was any circumstance that enabled you positively to fix the time as in the spring of 1875, and to state what that circumstance was; and in your reply you referred to the fact that Mr. Cowen went down to see Mr. Kissinger boring the pipe. Did you go with Mr. Cowen to see the boring of the pipe?

A. No, sir.

Q. 9. Did you, in that answer, refer to any knowledge you previously

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had of the boring of the pipe, or to information which you obtained from Mr. Cowan after he made his visit?

A. It was information from Mr. Cowen afterwards in conversation.

Q. 10. Do you remember whether you saw any work about the boring of the pipe, or saw the pipe, before they were laid?

A. I did see some pipe while he was boring at them, and saw some laid in the ditch before they were covered.

Q. 11. Have you any recollection as to how long that was before you saw the ram in operation, at the time you have mentioned?

[*Objected to as calling for mere guess-work.*]

A. I should say about one year, as near as I can get at it.

Q. 12. You have stated that your present recollection and belief is that you were mistaken in saying, on the former occasion, that the time when Mr. Cowen went down to see Mr. Kissinger boring the logs, or the time when he told you about it, was in the spring of 1875; will you state what has led you to change your belief—what information, if any, you have since received on the subject, and from whom you received it?

A. Wagner's date of stoning up the pit, which I didn't have before, and obtained through Mr. Cowen, just before I came up; and also, from Mr. Wagner's testimony since I have been here on examination.

Q. 13. Do you mean that you have read Wagner's testimony since you came here?

A. Yes, sir.

Q. 14. When and where was it that you saw Mr. Cowen?

A. Him and Mr. Kissinger came to my house this day a week in the evening.

Q. 15. State whether or not you became convinced that you had made a mistake on the former occasion, before you had started to come up here.

A. I felt convinced, after he told me of Wagner's date appearing, that I must be mistaken in the time, as before I had nothing but my memory and circumstance as related; and now there appears to be a date which fixes it beyond a doubt in my mind.

Q. 16. Do you mean after Mr. Cowen told you?

A. Well, so far as—I believe Mr. Cowen, of course—and after coming here and finding Mr. Wagner's testimony corroborating with his statement as he told me.

Q. 17. Did you have any conversation with any other persons than Mr. Cowen and Mr. Kissinger on the subject before you came up here?

A. No, sir.

Q. 18. In your former deposition you referred to the fact that Mr. Cowen laid down some wooden pipe on his place in 1875. Did you know of his having trouble after that with roots finding their way into his pipes and interfering with their operation?

A. Yes, sir.

Q. 19. And do you know whether he had to take them up or do anything with them to remove the obstructions?

A. Yes, sir; he took them up and took the roots out sometime afterwards.

Q. 20. Was that fact brought to your mind in any way before you testified on the former occasion?

A. Not in any way to make any impression on my mind at the time.

Q. 21. Was the fact that it had appeared in evidence, before that time, that Mr. Wagner did work on the wall of the pit in 1878 brought to your mind at the time you testified before?

A. No, sir.

Recess until 8, P. M.

Cross-examined by Mr. Hill, de bene esse:

Cross-Q. 22. In question 14 you were asked when and where was it that you saw Mr. Cowen, to which you replied: "Him and Mr. Kissinger came to my house this day a week in the evening." That was last Thursday, May 15th, 1884, in the evening, was it?

A. Yes, sir.

Cross-Q. 23. On that day did they come to your house in Maryland?

A. Yes, sir.

Cross-Q. 24. Who, if anybody, came with them?

A. Not any one; simply those two.

Cross-Q. 25. When did you leave your home in Maryland to come here on this present trip to testify on behalf of complainants?

A. Last Friday morning; I took the 7:9 train in the morning at Easton for this place.

Cross-Q. 26. That was the morning following the visit of Mr. Kissinger and Mr. Cowen to your place, was it?

A. Yes, sir.

Cross-Q. 27. At whose request did you come up here from your home last Friday morning?

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A. By the request of Mr. Brooks; I received a telegram from him; and also at the request of Mr. Cowen.

Cross-Q. 28. You mean Mr. James W. Brooks, one of the agents or attorneys for the Bell Telephone Company, who is here assisting in the taking of the testimony, do you?

A. Yes, sir.

Cross-Q. 29. When did you get the telegram from Mr. Brooks?

A. That same evening; as near as I can tell, about nine o'clock.

Cross-Q. 30. When Mr. Cowen requested you to come up here, did he tell you that anybody had sent him to see you, or get you to come up here?

A. Some time—whether before or after that I ain't positive—he said he was told to come down and see me; some time that evening, he told me. I don't know whether it was before, or after he asked me to come.

Cross-Q. 31. Did he furnish you with money to pay your expenses here?

A. No, sir.

Cross-Q. 32. Did he tell you who had sent him to get you to come here?

A. I believe he said Mr. Brooks, as near as I can recollect.

Cross-Q. 33. Then after testifying at Harrisburg you didn't talk or communicate with any of the attorneys of the Bell Telephone Company until last Friday, May 16th, did you?

A. No, sir.

Cross-Q. 34. You have referred to the fact of your examining Mr. Wagner's testimony since you came up here to Philadelphia. I suppose that you have talked considerably with the agents or attorneys of the Bell Telephone Company, since you have been here about what has been heretofore testified in this case, have you not?

A. Very little.

Cross-Q. 35. Mention the names of all those gentlemen with whom you have talked about it since you have been here.

A. Mr. Brooks and I had some little conversation about it. Mr. Storrow and Mr. Smith merely examined me about what I knew about the case—just privately in the office; that was all.

Cross-Q. 36. Did you talk with Mr. Comfort about it?

A. I think he merely mentioned it once in an offhand way; I only

talked to him a few minutes—just merely referred to it; nothing of any consequence passed between us.

Cross-Q. 37. Your main conversation about it since you have been here has been with Mr. Brooks; is that so?

A. Yes, sir.

Cross-Q. 38. Did Mr. Brooks show you Wagner's testimony?

A. I was looking for it and couldn't find it, and he merely got it for me.

Cross-Q. 39. Did Mr. Brooks talk to you any about Wagner's testimony?

A. He may have said something about it, but he handed it to me, and I read it for myself.

Cross-Q. 40. When Mr. Cowen visited you a week ago he told you, if I understood correctly, what Mr. Wagner had testified to; did he?

A. Not any more than to date; he said that he had dated it, and that was about the most that he said about his testimony—that he had fixed the date.

Cross-Q. 41. The date of putting in the ram?

A. Putting up the pit that the ram was in.

Cross-Q. 42. What other testimony besides Mr. Wagner's have you read since you have been here?

A. I was reading my own, Mr. Cowen's, Mr. Kissinger's, and I believe a part of Mr. Draper's; I don't know as I finished it; I was looking over it.

Cross-Q. 43. Do you mean Mr. Cowen's testimony at Harrisburg or here?

A. At Harrisburg; and also part of his last testimony—just a part that I found lying on the desk in looking over it.

Cross-Q. 44. Now, if you should be convinced that the ram was put in on the Draper farm, not in 1878, but in September, 1876, then would you think that your original testimony given at Harrisburg was correct as to the time when Cowen went down to Kissinger's and saw the pipes?

[*Objected to because in his original testimony he did not testify when Cowen went down to see the pipes.*]

A. If I were convinced—I suppose if I were convinced of the fact—why, of course, that would change it.

Cross-Q. 45. You have testified that you didn't see Mr. Cowen go down to look at Kissinger's pipes; how did you get the information at the time about his going down there?

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[Objected to because it does not state correctly what the witness has said, and because there has been no testimony to the effect that the witness did know of Mr. Cowen's visit at the time of the visit.]

A. In a conversation which we had some time after he came back.

Cross-Q. 46. Which you and Mr. Cowen had?

A. Yes, sir.

Adjourned until May 23, 1884, at 10, A. M.

MAY 23, 1884, 10, A. M.

Examination resumed.

Present, same counsel.

Cross-examination of Leonard Swartz, by Mr. Hill, continued:

Cross-Q. 47. I understand your testimony yesterday to mean that if you should be convinced that the ram was put in in the fall of 1876, then you would believe that your testimony at Harrisburg was substantially correct?

[Objected to, as the question is based upon the assumption that Mr. Cowen must have seen the ram in 1876, when his testimony was that he saw it at the time Wagner was stoning up the pit in the fall of 1878, and that that was the time when he had the talk with Mr. Kissinger about the logs.]

Mr. Hill states that the question is based upon no such assumption, nor is there the slightest foundation for the statement contained in the objection to the effect that it is based upon such assumption. And Mr. Hill calls the attention of the Court to the extraordinary character of the objection which has just been stated by complainants' counsel, in the hearing of this witness, for the self-evident purpose of influencing the answer of the witness, and of arguing the question to the witness while he is on the stand. And if this interference with the cross-examination is further persisted in, respondents' counsel will make it the basis of a motion for striking out the deposition.]

A. I answered that question yesterday, didn't I? If I could make the statement in my own way, I could make it, I think, more satisfactory.

[Mr. Hill says: "Go on, and give it in your own way."]

The reason that I could not well be convinced of that fact is, that was living near him, and was back and forth frequently—while running

the dairy wagon I frequently drove in for milk—and in my going back and forth I never saw the ram in operation until that fall that I went there to butcher for him, as I have testified, in the latter part of November; and Mr. Wagner, in his testimony, fixes the date for me, and fixes the time conclusively in my mind as being the time, from the fact that it had been just put up shortly before that time. That is the way I understand it.

Cross-Q. 48. Wagner, in his testimony, fixes what date for you?

A. November 6th and 7th, 1878.

Cross-Q. 49. As the date of what?

A. Stoning up the pit that the ram was in.

Cross-Q. 50. Now, if you should be convinced that the ram was not put in at the time that the pit was stoned up, but was put in more than two years before that time—namely, in September, 1876—then would you believe that your testimony at Harrisburg was substantially correct?

[Objected to because the question has been twice put, and answered by the witness, and it is improper to persist in repeating the question.]

A. I couldn't be convinced of the fact that I was there often during that time, over the same ground that the ram was on, and I never saw it until the time that I butchered there that fall, in November.

Cross-Q. 51. I didn't ask you whether you could be convinced or not; but men sometimes make mistakes through errors of recollection, or information; what I meant to ask you was this: Assuming, for the purposes of my question, that the ram was put in in the fall of 1876; in such case, would you believe that your conversation with Mr. Cowen was at the time stated by you at Harrisburg?

[Objected to for the reasons already stated. And counsel for complainants calls the attention of respondents' counsel to the fact that in his examination of the witness on the previous occasion he did not attempt to establish any connection between this witness' knowledge and the time when the ram was put in, but only a connection between his knowledge and the time of a visit made by Mr. Cowen; and he is not justified in endeavoring to force from the witness as to what his conclusion would be upon an assumed state of facts, as to which the witness was not asked in his previous deposition.]

A. As I am not convinced, and don't know in what way I might be convinced, I cannot tell, under such circumstances, what I might think.

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Cross-Q. 52. You did not see the putting in of the ram, did you?

A. No, sir.

Cross-Q. 53. You do not know, then, of your own personal knowledge, in what year the ram was put in, do you?

A. Not from my own personal knowledge, as I had no date of my own to fix it upon, and was thrown entirely upon my memory. I have taken Wagner's date in his testimony as correct, as I believe he is a man who keeps his accounts correctly; and I take for granted that that was the year, as he puts it; that is where I got it from.

Cross-Q. 54. And you think that Kissinger could not have been boring his pipes three years and a half before the ram was put in, and, therefore, that the date fixed by you at Harrisburg must have been incorrect; that is your idea, is it not?

A. Yes, sir.

Cross-Q. 55. When you testified at Harrisburg, you testified without regard to Wagner's dates, and without knowing them, if I understand you?

A. Yes, sir; I didn't know Wagner had any date of it at that time.

Cross-Q. 56. When you testified at Harrisburg from your own information and belief, it was then your memory and belief that your conversation with Cowen about his going down to see Kissinger boring the pipes occurred in the spring of 1875, was it not?

A. Yes, sir.

Cross-Q. 57. And that continued to be your memory and belief until you became convinced from Wagner's testimony that the ram was put in in the fall of 1878, did it not?

A. Yes, sir.

Re-direct by Mr. Smith:

Q. Q. 58. Before you testified in Harrisburg, did Mr. Jacobs, one of the counsel in this case, and Mr. Drawbaugh and Mr. W. K. Fenn come down to see you at your home?

[*Objected to as new matter not referred to in the cross-examination.*]

A. Yes, sir; they were down.

Q. Q. 59. Did they say anything to you about the testimony they had taken about the time when the ram was put in, or what other people said about the time?

[*Same objection.*]

A. They said that there were persons who would testify to that, I believe, as near as I can remember.

Q. Q. 60. Do you recollect what they said the date was, that persons would testify that the ram went in?

[*Same objection.*]

A. I believe it was in 1876, or about that time, as near as I remember.

Q. Q. 61. After you came up to Harrisburg, did you have any talk with the defendants' counsel as to the testimony regarding the time when the ram was put in—either that which had been taken, or that which was to be taken?

[*Same objection.*]

A. Very little said to me directly about it. I heard it repeated in the office. It may have been at different times that more or less was said. I don't just recollect the conversation.

Q. Q. 62. Did you have any conversation with Mr. Cowens before you testified, as to what his belief was as to the time of his interview with Mr. Kissinger?

[*Same objection.*]

A. Yes, sir; I had a talk with Mr. Cowens.

Q. Q. 63. If Mr. Cowens had told you that his interview took place at the time Mr. Wagner was stoning up the pit, and you had been told that Mr. Wagner stoned up the pit in November, 1878, would you then have believed that the interview between Mr. Cowens and Mr. Kissinger took place in the spring of 1875?

[*Same objection, and further objected to as leading, argumentative, and incompetent.*]

A. If those facts had been brought to my mind at that time, I shouldn't have testified as I did, of course.

Q. Q. 64. You stated in your cross-examination that you came up here last week—Friday. Did you return to your home next day and come up here again the following Monday?

A. I did. I left the next day at 5.21, and went home, and came back the following Monday at about 11 o'clock.

Re-cross by Mr. Hill, de bene esse:

Re-cross Q. 65. What you testified to at Harrisburg agreed with what you had always told Mr. Jacobs, Mr. Drawbaugh, and Mr. Fenn,

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and others of the respondents' counsel or agents, in all your conversations with them up to the time you testified; is not that the fact?

A. Yes, sir; my mind was impressed in that way all the time, up to the time I testified.

Re-cross-Q. 66. And it was your own independent recollection and memory of the facts, was it not?

A. Yes, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 23d day of May, 1884.

FRED. M. OTT,
Examiner.

LEONARD SWARTZ.

[Respondents' counsel now calls the attention of the court to the statement and notice placed on the record by complainants' counsel May 13, 1884, and printed on page 2147 of complainants' printed record, and to the proceedings here yesterday, including the objection and protest entered by respondents' counsel against the complainants continuing to take testimony after the time limited by their own stipulation had expired, and without any order of court permitting them to do so, and to the fact which appears from the testimony of Mr. Swartz, whose deposition has just been concluded, that evidence which complainants are now putting in is evidence which had not even come to the knowledge of complainants' counsel until May 16, 1884, the day after complainants' time for taking evidence in rejoinder had expired. And respondents' counsel further state that they are informed and believe that, during the period intervening between the 15th day of May and the present day, the complainants have been actively at work through their agents, employés, and counsel, in fishing for evidence and in trying to influence witnesses who have been heretofore examined on behalf of respondents to come here and modify their testimony upon the strength of arguments, representations and misrepresentations made to them for that purpose. And respondents' counsel, renewing and emphasizing the objections and protests made by them upon the record yesterday denounce the present proceeding as an outrage such as, within their experience, has never before been attempted in any legal proceeding, and call the attention of the Court particularly to the character of the testimony which has been so put in, and which may be hereafter put in. And they

also call the attention of the court to the fact, under guise of continuing the proceedings in order to put in evidence which was in their possession, but which they did not have time to put in on or before May 15, the complainants are in fact continuing indefinitely to hunt for and take testimony after their time has expired, and during the time which the respondents have a right to occupy.

Complainants' counsel calls attention to the fact that Mr. Swartz was in attendance yesterday, when the arrangement of yesterday was made, and had been for several days, as they believe, with the full knowledge of defendants' counsel; and that the defendants' counsel, or their agents, have had more or less talk with him while he has been in attendance for the purpose of examination, as they understand.

Respondents' counsel, Mr. Hill, states that the only conversation he has had with Mr. Swartz here, off of the witness-stand, consisted in accidentally meeting him while passing along through this hotel at the close of the day's session here, and in saying to him: "How do you do, Mr. Swartz?" and after Mr. Swartz's reply to that question, saying: "Have you come here with a new memory?" and after a vague and non-committal reply to that question, saying: "Good evening, Mr. Swartz," and walking away. And he is requested by his associate counsel to state that they have none of them had any conversation with Mr. Swartz while here.]

CALVIN J. DICK, being produced, affirmed, and examined, saith:

Examined by Mr. Howson:

My name is Calvin J. Dick; aged thirty-one years; Rye township, Perry county, is my residence; occupation, farmer.

Q. 1. How long have you been living on the farm which you now occupy?

A. Four years.

Q. 2. Where and with whom were you living immediately before you went on to the farm which you now occupy?

A. I was living with father, on father's farm; father's farm joins me on the north; we join land; it is in Rye township, Perry county.

Q. 3. Are you acquainted with Mr. C. I., Peter J., Charles W., and W. Heisley, who now live in Rye township, Perry county, and were you acquainted with Philip Heisley, the father of these gentlemen, during his lifetime; if yes, about how long have you been acquainted with that family?

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A. I am acquainted with them. Well, I couldn't state exactly how many years; it might be probably fourteen or fifteen years.

Q. 4. How far is the farm occupied by this Heisley family from your father's farm, where you were living before you moved on to your present property?

A. They join lands.

Q. 5. If in any year your father was living in the city of Harrisburg, and you were living there with him, please say in what year that was.

A. Year '76.

Q. 6. Did your father move to Harrisburg in that year from his farm in Rye township; and if yes, in or about what month of the year 1876 was it he so moved?

A. He moved from his farm in that year to Harrisburg in the latter part of March.

Q. 7. How long did he continue to live in Harrisburg, and where did he remove to from Harrisburg?

A. He continued there till the forepart of December, and then moved back on his farm in Rye township.

Q. 8. While he was living in Harrisburg, did you or not live there with him?

A. I did.

Q. 9. What were you and he working at during that time, and where?

A. At the Pennsylvania steel-works at Steelton.

Q. 10. While your father was living at Harrisburg, who occupied his farm in Rye township?

A. Mr. Jacob Shriver.

Q. 11. Had you or not occasion after your father had removed from the Rye township farm to Harrisburg to visit that farm; and if yes, how long, or about how long, after your father had moved away from it to Harrisburg?

A. I had, shortly after we had moved to Harrisburg.

Q. 12. What was your errand there on that occasion, and to what place other than the farm did you go?

A. My errand there was to procure a conveyance to go to New Bloomfield.

Q. 13. Did you or not procure a conveyance there, and did you or not go to New Bloomfield?

A. I procured the conveyance and went to New Bloomfield.

Q. 14. Going to or returning from New Bloomfield that day, did you or not have occasion to pass the farm occupied by the Heisley family?

A. I did.

Q. 15. Did you or not that day see and converse with any of the members of that family; and if yes, with which of them, and was it in going to or returning from New Bloomfield?

A. In returning from New Bloomfield I saw and conversed with C. I. Heisley and J. F. Heisley.

Q. 16. Whereabouts was it that you saw and conversed with these gentlemen that day?

A. They were moving about between their house and their barn.

Q. 17. What, if any, conversation had you with these gentlemen, or with either of them, at that time, as to what they were doing or were about to do?

[Objected to as immaterial and incompetent, and calling solely for hearsay statements of other witnesses who have since testified in behalf of complainants.]

A. I conversed with J. F., or rather he with me, about repairing their pipes that conveyed the water from their spring to their spring-house.

Q. 18. What, if any, trouble did he tell you there was with those pipes?

[Same objection.]

A. In substance, it was that they were leaking.

Q. 19. At this time, and during the conversation, did you notice upon the premises any pipe or pipes; and, if yes, what kind of pipe?

[Objected to as leading, both as to the time and as to the pipes.]

A. I saw some wooden pipe.

Q. 20. Did you, or not, see any tool or instrument on the premises; and, if yes, what kind of a tool or instrument, and whereabouts was it?

[Objected to as leading, especially in view of the clause "at or near this wooden pipe," pronounced within hearing of the witnesses and then struck out of the question.]

A. I saw what I supposed was an auger in a stick of timber.

Q. 21. You have stated that this was shortly after your father had

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moved from Rye township to Harrisburg. Can you say a little more definitely how long after your father moved this visit was made?

A. I couldn't say exactly, but I think it must have been within two weeks. It may have been within a week.

Q. 22. Please look at the paper which I now show you, and say who the Calvin J. Dick referred to therein is.

A. Well, I don't know of any other, so I suppose it refers to myself.

[The paper referred to in the last foregoing question and answer is offered in evidence by complainants as "Dick's Certificate," and reads as follows:

"Steelton, Dauphin Co., Pa., May 10, 1884.

To whom it may concern:—

I Chas. P. Baker, time-keeper at Penna. Steel Works, do hereby certify that Calvin J. Dick entered the service of the Penna. Steel Works, at Steelton, Pa., on April 18, 1876, and continued in it until 6.00 o'clock P. M. July 27, 1876 as appears upon the records of said Penna. Steel Company.

Chas. P. Baker.
(Time-keeper)"

[Objected to as clearly incompetent, and because its attempted introduction is a gross violation of the rules of evidence:

First. It purports to be a mere statement of a private individual, unverified, and has not even the force of an affidavit. Second. The said Charles P. Baker is not produced for cross-examination, nor has even the paper been proved to be in his handwriting. And third. The records referred to in said paper are the best and only competent evidence on the subject embraced in said paper.]

Q. 23. Please look at the book which I now show you, and say what it is, having special reference to the accounts which appear on the pages 1 to 7 both inclusive.

A. Well, it is father's account with the Pennsylvania Steel Company in their company's store at Steelton.

[Book offered in evidence as "Exhibit Dick Book."

Objected to as irrelevant, immaterial, and incompetent, and also because not properly proved.]

Q. 24. Who, if you know, is the George E. Bent whose name appears at the foot of page 1?

A. He is the superintendent of the Pennsylvania steel-works at Steelton.

Q. 25. And the Israel Dick, whose name appears at the head of the page, is your father, if I understand you ?

A. He is.

Q. 26. Did you, or not, visit the Centennial Exposition in 1876 at Philadelphia ?

A. I did.

Q. 27. Where were you living when you visited that exposition ?

A. In Harrisburg.

Q. 28. Referring to "Exhibit Dick Book," say whether you had, or not, knowledge of that book during the time you and your father were living at Harrisburg; and if yes, how you acquired that knowledge.

[*Objected to as leading.*]

A. I had knowledge of the book from the fact that I handled it frequently, taking it to the store and home.

Q. 29. Are you, or not, personally acquainted with Mr. Thomas Draper, who formerly owned a farm, known as the Draper farm, near the village of Marysville, and with Mr. George W. Kissinger, who at one time occupied that Draper farm: and if yes, how long have you known those gentlemen ?

A. I am acquainted with Draper and Mr. Kissinger. I couldn't tell exactly how long I am acquainted with Mr. Kissinger, but I was acquainted with Mr. Draper eighteen or twenty years.

Q. 30. It has appeared in evidence that Mr. Kissinger moved from that farm in the spring of 1880, and at or about that time had a sale of some of his property or effects. Did you, or not, attend that sale ?

[*Objected to as immaterial.*]

A. I did.

Q. 31. Did you, or not, at that sale meet Mr. Thomas Draper, referred to in question 29 ?

[*Same objection.*]

A. I saw him there on his farm, occupied by Mr. Kissinger, on the day of Mr. Kissinger's sale.

Recess until 8, P. M.

Q. 32. In your answer to interrogatory 20, you say that the time of the interview, to which you have testified, with the Messrs. Heisley at their farm, you saw what you supposed was an auger in a stick of

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timber; will you please say what sort of a stick of timber that was, and in what direction with regard to the length or breadth of the stick the auger was in it?

A. It was a round stick of timber, I think, in its rough, natural state, and, as near as my memory serves me, it was from twelve to fourteen feet in length; it may have been a little longer, or a little shorter; I didn't pay any special attention to the length of the stick; the stick, and other timbers lying with it, were lying a little north-west and south-east.

Q. 33. You have stated that you saw what you supposed was an auger in the stick. Did that tool appear to be in the stick crosswise, lengthwise, or in what direction?

A. It was in lengthwise.

Q. 34. What, if any, talk had you with Messrs. Heisley, or with either of them, about the boring of the stick?

[Objected to as incompetent, calling solely for hearsay statements of other witnesses who have since testified in behalf of complainants.]

A. The only conversation that I can remember took place between J. F. Heisley, and, I think, I, with reference to the controlling of the auger—that it would run straight through the timber; and he told, and, I think, showed me, how it was done.

Cross-examination, de bene esse, and under protest, by Mr. Dixon:

Cross-Q. 35. Are you acquainted with James W. Brooks?

A. If it refers to this gentleman I am; I didn't know his initials.

Cross-Q. 36. Do you mean the gentleman who has been present during your examination, and in active consultation with complainants' counsel, and who, from time to time, upon hearing and reading your testimony, has suggested additional questions?

[Objected to as embodying statements in the nature of testimony from a party not on the stand and who can't be cross-examined.]

A. I do, sir.

Cross-Q. 37. He has frequently been addressed as Mr. Brooks, and you understand him to be Mr. Brooks, do you not?

A. I do.

Cross-Q. 38. Where and when did you first meet him?

A. I met him first at my place; I couldn't tell the exact date—about three weeks ago, or near three weeks ago, or near that time.

Cross-Q. 39. When and where did you next meet him?

A. At my place, three or four days after our first meeting.

Cross-Q. 40. When and where did you next meet him?

A. I met him next in this hotel, two weeks ago from to-morrow.

Cross-Q. 41. Who was present when he first met you, about three weeks ago?

A. Mr. P. J. Heisley.

Cross-Q. 42. Did Mr. Heisley come with Mr. Brooks to your place on that occasion?

A. He did.

Cross-Q. 43. How long was he there?

A. Not over twenty minutes.

Cross-Q. 44. Was Mr. Brooks introduced to you on that occasion by Mr. Heisley?

A. He was.

Cross-Q. 45. What was the first thing that Mr. Brooks said to you at that interview?

A. I think the first was a compliment on the pleasant weather, or, rather, pleasant day.

Cross-Q. 46. Was it not a rainy day?

A. No, sir.

Cross-Q. 47. Did not Mr. Brooks just remark, in your presence, it was a rainy day, and afterwards remark it was a rainy day the second visit?

[*Objected to as incompetent and not cross-examination.*]

A. I didn't hear it; I didn't hear that remark.

Cross-Q. 48. What was the next thing said by Mr. Brooks on that first visit?

A. Well, as near as I can call to memory, he asked me whether I remembered being at Heisley's, and seeing pipes, or seeing them bore pipes, or something to that effect, and when.

Cross-Q. 49. Did he talk with you about the time?

[*Objected to as vague and indefinite.*]

A. He did not.

Cross-Q. 50. But you have just stated, in your preceding answer, that Mr. Brooks said "and when," have you not?

A. He merely asked me whether I knew the time; he said nothing about the time himself.

Cross-Q. 51. Then, can you say there was no talk about the time?

[*Objected to as a mere playing upon words, and as badgering, and as argumentative.*]

A. There was not, no more than I answered his question as to whether I knew the time.

Cross-Q. 52. Did Mr. Heisley, who came with Mr. Brooks, say anything about his remembering any such occasion as you have referred to on your direct-examination?

A. I wouldn't know what occasion you referred to, particularly.

Cross-Q. 53. I refer to the only occasion you have mentioned—when you were at the Heisley's and had a talk with them.

[*Objected to as vague and unintelligible.*]

A. After I had answered Mr. Brooks' question, P. J. Heisley said something that he remembered, or thought he remembered, of me being there.

Cross-Q. 54. What else did Mr. Heisley say in that conversation, which you say occupied about twenty minutes?

[*Objected to because the witness has not so stated.*]

A. He said nothing at all that I remember on the subject before us.

Cross-Q. 55. I suppose, when Mr. Brooks first asked you the question, you remarked instantly that it was in '76 that you had this talk with Heisley, did you not, although it was a little circumstance occurring eight or ten years ago?

A. Well, I knew it instantly, but it didn't just come to my mind at that time.

Cross-Q. 56. Did it come to your mind before Mr. Brooks got through with you on that occasion?

A. Well, not particularly, because it was in my mind before Mr. Brooks came there.

Cross-Q. 57. Can you explain, then, how it happened, if this was in your mind before Mr. Brooks came there, that, when Mr. Brooks first asked you, you said "It didn't just come to my mind at that time," as you have just stated?

[*Objected to because the witness' statements are perfectly clear and require no explanation, and so far as the terms of the question imply the contrary of this, are simply a perversion and misconstruction of what the witness has said.*]

A. Well, I heard parties talk on the subject, and I remembered of

being there and seeing the pipes; so I pondered it over in my mind till the whole circumstance was clear to me.

Cross-Q. 58. Will you, then, explain how it happened that when you had heard so much talk on the subject and your mind was so full of it, that, nevertheless, when Mr. Brooks first asked you when that occasion occurred, during that interview with him, "it didn't just come to your mind at that time?"

[Objected to because the question implies what the witness has not testified to, and garbles his testimony by quoting a part only of his answer, the whole of which is as follows: "I knew it instantly, but it didn't just come to my mind at that time;" and, furthermore, the meaning of that answer fully appears from the next, where the witness states it was in his mind before Mr. Brooks called.]

A. I can't answer that question under that construction.

Cross-Q. 59. When Mr. Brooks left you after that twenty minutes' interview he went away understanding that it was your recollection that that little incident of the single visit to the Heisleys you have mentioned, occurred precisely in 1876, and in the spring of that year, did it not?

[Objected to as immaterial, because the witness can't be asked to testify as to Mr. Brooks' understanding.]

A. Well, I wouldn't be able to say what conclusions he had come to, because he did not manifest his conclusions.

Cross-Q. 60. Will you say that you don't believe that Mr. Brooks went away with that understanding?

A. No, sir; I won't say that. He may have come to that conclusion, and he may not.

Cross-Q. 61. That is, after all your talk together, it is now doubtful in your mind whether he had such an understanding when he left you—I mean, understanding as to your recollection that this little incident occurred in 1876, and in the spring of that year.

[Objected to as immaterial and incompetent. If the object is to inquire into what the witness said or what Mr. Brooks asked him, that question should be asked in a direct and intelligible form.]

A. I can't say that I doubt that he came to that conclusion, but I do not know.

Adjourned till May 23, 1884, at 10 o'clock, A. M.

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MAY 23, 1884, 10 o'clock, A. M.

Examination resumed.

Present, Mr. Howson for complainants, and Mr. Dixon for defendants.

Cross-examination of Calvin J. Dick continued by Mr. Dixon:

Cross-Q. 62. Who came with Mr. Brooks when he visited you the second time?

A. Mr. J. W. Beers.

Cross-Q. 63. How did they come there?

A. In a buggy.

Cross-Q. 64. Where were you when they were talking with you?

A. I was standing beside the buggy.

Cross-Q. 65. Did they call you out, or how came you out to their buggy?

A. I was out at work, and was called by a little boy.

Cross-Q. 66. Did they tell you then that they wanted you to come down to Philadelphia to testify in this case?

A. Mr. Brooks said he guessed they would have to ask me to come to Philadelphia.

Cross-Q. 67. Did you know Mr. Beers before, or did you meet him then for the first time?

A. I knew him for twelve or fifteen years.

Cross-Q. 68. When had you last seen him previous to that occasion?

A. I saw him quite frequently passing along the road by my place; the last time, I think, I was working in the garden, right along the road; it may have been three or four days.

Cross-Q. 69. When had you last talked with him previous to the time he came with Mr. Brooks?

A. The last time I had spoken with Mr. Beers previous to that visit was in the court-house at New Bloomfield, I think, in the latter part of January, this year—1884.

Cross-Q. 70. I suppose there was no talk, either by Mr. Brooks, Mr. Beers, or yourself, on his second visit, about the circumstance of the single visit by you to the Heisley's.

A. I don't remember of any.

Cross-Q. 71. Mr. Beers showed no curiosity as to what you were to testify to, I suppose.

A. He did not, that I noticed.

Cross-Q. 72. What do you understand or what has been said as to the compensation you are to receive for your time in this matter?

A. I haven't come to any understanding, and there was nothing said to me what I am to have, or whether I am to have anything.

Cross-Q. 73. And you have no idea from what has been paid to others, or from any other circumstance, as to anything about what you are to receive, and you have not at any time been handed any money?

A. I know nothing from any circumstance, nor from what any others received as I do not know what others have received. I have received money to defray my traveling expenses for coming here.

Cross-Q. 74. What is the total amount of money which has been handed to you?

A. About forty dollars.

Cross-Q. 75. Was all this money handed to you at one time or at different times?

A. It was handed to me at different times.

Cross-Q. 76. When, and what amount was handed to you the first time?

A. The amount of fifteen dollars was handed to me the time of the visit of Mr. Brooks and Mr. Beers to my place.

Cross-Q. 77. That fifteen dollars was the first money that was handed or paid to you, was it?

A. It was.

Cross-Q. 78. Was the remaining twenty-five dollars paid to you at once or at different times, and when?

A. Ten dollars of the balance was paid to me the evening of the next day, and the balance, fifteen, was paid to me on last Saturday.

Cross-Q. 79. Who paid you the ten dollars on the evening of the next day after Mr. Brooks was at your place and you were paid fifteen dollars?

A. Mr. Storrow.

Cross-Q. 80. What is the railroad fare from your place to Philadelphia?

A. From the nearest railroad station it is three dollars and thirty-six cents.

Cross-Q. 81. Have you paid any hotel bills while you have been in attendance here at this house?

A. I have not.

Cross-Q. 82. How long were you and the Heisleys living upon adjoining farms?

A. I couldn't tell exactly how long, but ever since the time I first knew them—only the one summer we had moved away—up to the time I moved on the farm where I now live.

Cross-Q. 83. Well, about how many years prior to, say, 1876, were you living continuously upon adjoining farms?

A. Couldn't tell precisely; must have been from six to eight years; somewhere along there.

Cross-Q. 84. During the period from 1870 to 1876, when you were living upon adjoining farms, were you over to the Heisleys' occasionally, and if so, how often?

A. I was there occasionally; couldn't tell how often.

Cross-Q. 85. About how many times were you there during the year 1874?

A. I couldn't tell about how often.

Cross-Q. 86. While the occurrence of these visits happened eight or ten years ago, yet can you give us some estimate of the number of times you were at the Heisley's during 1874?

[Objected to as inquiring for mere guess-work, and as immaterial.]

A. I can't give any estimate; I might have been there twelve or fifteen times, for all I know.

Cross-Q. 87. It has appeared in evidence that in 1874 the Heisleys bored out pipes and put them in between their spring and spring-house; your farms were then adjoining, and although this circumstance occurred a number of years ago, yet do you remember it?

A. I remember of their laying pipes from their spring to their spring-house—not from personal observation, but from hearing the family speak of it, but do not know the year—the exact time when it was—but only that it was done.

Cross-Q. 88. Do you remember the precise circumstances and particulars under which you gained the knowledge of that occurrence eight or ten years ago?

A. I do not; I only learned it from hearsay.

Cross-Q. 89. Do you remember the precise circumstances and particulars of the occasion when you learned it, eight or ten years ago?

[Objected to because already put and answered.]

A. I do not remember any precise circumstances; I only acquired

the knowledge from hearing them speak of it at times while I was there at the Heisley place.

Cross-Q. 90. And you don't remember the circumstances of those visits—what took you there at those times, etc?

A. No, sir; they were uncircumstantial—only social.

Cross-Q. 91. How many times were you at the Heisleys' during the year 1875?

A. I couldn't give any estimate; I suppose about as often as in '74.

Cross-Q. 92. Do you remember the circumstances of any of the times when you happened to be at the Heisleys' in the spring of 1875?

A. I remember no special circumstances at this time.

Cross-Q. 93. Do you remember any circumstance connected with your being at the Heisley's during the year 1874?

A. I do not.

Cross-Q. 94. Do you remember any circumstance connected with your being at the Heisleys' at any of the different times in the year 1873?

[*Objected to as trifling.*]

A. I do not, unless getting a very good meal sometimes, and courting the girls sometimes, would be circumstances.

Cross-Q. 95. Then, during those years, you were quite intimate at the Heisley's, were you?

A. There was nothing more than ordinary intimacy.

Cross-Q. 96. And during those years you probably drove by the Heisley place frequently, did you not?

A. I did not that I remember, as I had no rig of my own, and father had none which I wished to drive.

Cross-Q. 97. Then, although you lived on adjoining farms, you think that during all those years you never drove along the road in front of the Heisley's?

[*Objected to unless the years referred to be specified.*]

A. I may have drove along, but it wasn't a frequent occurrence.

Cross-Q. 98. Although the period inquired about was from eight to twelve years ago, can you swear positively now that never, when you were riding by, did you happen to have a chat with any of the Heisley boys?

[*Objected to because it is not made to appear what particular period is being inquired of.*]

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In reply to the above protestation, counsel is referred to the terms of the question, which specifies the date of the period as eight to twelve years ago.

Complainants, therefore, further object that since, according to the last statement, the question is intended to include a period from 1872 to 1876, it is misleading, because the question immediately preceding, and upon which this question purports to be based, does not either expressly or by implication refer to that or any other particular period.]

A. I could not.

Cross-Q. 99. Can you swear positively that at no time during the period mentioned—from 1870 to 1876—you happened to be at the Heisleys' when the Heisley boys happened to be moving about between their house and their barn?

[Complainants' counsel asks the cross-examining counsel to state whether the period intended to be inquired of includes, or excludes the two particular years named.]

Respondents' counsel replies that the term "from 1870 to 1876" obviously does not mean during the year 1876, but prior to that time.]

I could not.

Cross-Q. 100. Mr. Joseph F. Heisley has testified, p. 681, defendants' sur-rebutting testimony, that after the pipes were first laid on their place "they didn't work well—they leaked; we tried to repair the pipes by using tow and pitch; it didn't better it." And Christian Heisley has also testified (p. 667) about the pipes, that after they were first laid "they didn't carry the water" the way he wanted them, and "as I was at home we went to see what was the matter with them and found they leaked; and then we fixed them, and then they didn't work and we left them till the next spring." Can you swear positively that you never heard any such complaint after the pipes were first laid, or can you only say you don't remember of hearing any such complaints?

[Objected to as incompetent, vague, and indefinite, and not cross-examination; further objected to as complex and unintelligible, and further objected to as a misstatement of the testimony of the witnesses referred to, inasmuch as it withholds the fact, appearing in the record for complainants in rejoinder, [see pages 1792 and 1834,] that Messrs. C. I. Heisley and Joseph F. Heisley have since testified that the job of boring and replacing the pipes with new ones was not in the spring of 1875, as at the times of testifying for defendants they supposed, but in the spring of 1876.]

Counsel for respondents states that as to the pertinent point of the difficulty with the pipes on account of their leaking from the time they were first laid, referred to in the citations of the question, there is not a particle of testimony in either the complainants' or the respondents' testimony in conflict with the statements cited from the testimony of the witnesses.

Complainants' counsel rejoins, that without seeking, at this time, to question or discuss the accuracy of the last statement, he points out that the citations in the questions were not confined to the point which defendants' counsel now states to be the pertinent point.]

A. I can do neither.

Cross-Q. 101. Why?

[*Objections repeated.*]

A. Because I did hear such complaint.

Cross-Q. 102. State the circumstances under which you heard the complaints about the pipes leaking.

[*Objected to as not cross-examination.*]

A. Well, I was there at Mr. Heisley's, and they were making some pipe, and J. F., I think—I am pretty positive—told me that their pipes were leaking that conveys their water from spring to spring-house.

Cross-Q. 103. It has appeared that these pipes were first laid in 1874; can you swear positively that between 1873 and 1876 you never heard any such complaints or any reference to the matter, or can you only say you don't remember of hearing anything about it?

[*Objected to as vague and indefinite both as to substance and as to time, and as simply intending to confuse and mislead.*]

A. I don't remember of hearing any complaints prior to 1876.

Cross-Q. 104. But you don't remember the circumstances of your various visits to the Heisley's during that period, beyond that they were "uncircumstantial—only social"?

[*Objected to as insensible.*]

A. I remember no special circumstances.

Re-direct examination by Mr. Howson:

Q. Q. 105. On the occasion of the visit, to which you have testified, from Harrisburg to your father's farm in Rye township, and from there to New Bloomfield and back, what horse did you use on the trip to New Bloomfield, and where did you get the animal?

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[Objected to as improper re direct examination, the subject not having been inquired into on cross-examination.]

A. I used a colt of father's that he had left on his farm when he moved to Harrisburg in the spring of 1876.

Q. Q. 106. What, if any, particular circumstances have enabled you to recall that trip to your father's farm and to New Bloomfield, and to remember that it was upon that occasion that you had the conversation with Mr. Heisley to which you have testified in chief?

[Same objection.]

A. Well, there are various circumstances connected with the trip. First, I remember it from the conveyance or team that I drove at that time, which was the only time I had drove that team, and the remark of one of the Mr. Heisleys—I think P. J.—that I was driving a fine rig, and asked me whether it was a Harrisburg rig. I also know that it was on that occasion because that was the first and only visit that I had made back to the farm during the time we had moved away from the farm to Harrisburg; and I also know it was on that occasion from a conversation that took place between me and a certain lady during the time of a sporting trip to New Bloomfield, after a short time—my first trip to New Bloomfield—referring her to my trip up there shortly before that time, and not knowing that a special friend of mine lived at that place. It was also the first time that I had ever saw pipes of that kind, and, therefore, made more of an impression on my mind.

Q. Q. 107. You have been questioned in cross-examination as to the moneys you have received, and as to traveling expenses, and so forth. Please state whether you have been here continuously, since you came down here about two weeks or so ago, or whether you had been home and returned in the meanwhile; and if home more than once, how many times.

A. I have not been here continuously. I have made two visits home to my family since I first came here.

Q. Q. 108. You have been asked and have stated the amount of the railroad fare here from the nearest railway station to you. Have you, on your several trips, come that way? If not, state in what manner you did travel from your home to this place.

A. I did travel from here to my place, and from my place here, by railroad, only the distance between my place and the railroad, which I generally walk, being a distance of nearly three miles.

Q. Q. 109. If I understand you right, you have made five railroad trips altogether—three from your home to this place, and two in returning from this place to your home; is not that correct?

A. That is correct.

Examination taken, reduced to
writing, and by the witness af-
firmed to, and subscribed before me,
this 23d day of May, 1884.

CALVIN J. DICK.

JOSHUA R. MORGAN,
Notary Public, Special Examiner.

Recess until 2.30, P. M.

SIMON G. EPPLER, *being produced, sworn, and examined, saith:*

Examined by Mr. Storrow:

My age is fifty-three. I reside in Marysville, Perry county, Pennsylvania. I keep a shoe-store.

Q. 1. Are you a brother of Herman J. Eppler, whose deposition was finished yesterday?

A. Yes, sir.

Q. 2. When did you begin to keep a shoe-store in Marysville, and who had kept it before you?

A. I commenced the last day of February, 1882, and my brother, Herman J. Eppler, had kept it before. I bought it from him—bought him out.

Q. 3. Where had you lived, and what had been your occupation for ten years before that?

A. I lived at Marysville since 1861, and was working for the Northern Central Company until February 19, 1882. I think that was the last day I was in the company's employ.

Q. 4. Do you know the Draper farm at Marysville, upon which George W. Kissinger lived for a number of years?

A. Yes, sir.

Q. 5. At one time Mr. Kissinger cut some chestnut logs on that farm to be bored for piping; if you know anything about any logs being cut for that purpose, will you state what you know and the circumstances under which you obtained the knowledge?

A. Me and my brother, Herman J., went out gunning one morning, and as we came through Draper's woods he called my attention to some

trees that was cut down. He said he would have to see Kissinger about this—cutting these trees in this grove here; there was none to be cut there, he said. Then we started off down to the barn, and found Mr. Kissinger in the stable with the horses. My brother, Herman J. Eppler, asked him about cutting those trees down, and he said that he got the privilege from Draper to cut them for water-pipes. That is about as much as I know about it; he didn't say what the pipes were for more than for water-pipes.

Recess until 2.30, P. M.

Q. 6. What business of your brother's was it whether trees were cut in Mr. Draper's grove?

A. Why, he said he was agent for Mr. Draper, and would have to see about it. I wanted him to put it off till some other day, and he said he would go down right away, and save the trouble of walking up there again.

Q. 7. Do you remember what took you up to Mr. Kissinger's place the next time you went up there?

A. I went up to castrate some pigs for him.

Q. 8. When was that—about how long after you and your brother found that timber had been cut in the woods, as you have stated?

[*Objected to as calling for mere guess work.*]

A. It was the next fall after—about October, as near as I can tell—when cool weather commenced.

Q. 9. Whereabouts on the farm did you castrate the pigs?

A. At the pig-pen, right close to the barn.

Q. 10. Was there any hydraulic ram in on the farm at that time, or not?

A. No, sir.

Q. 11. Were there any preparations for a hydraulic ram going on at that time, or not?

A. Yes, sir; Frank Kissinger was working at the drain, or ditch, or whatever you might call it.

Q. 12. If you remember when you were next on the Kissinger place, will you state when it was, and who was with you.

A. I have no date for it, but it was the next summer after I was there castrating them pigs. Me and my brother Herman J. was there. They were talking about putting some phosphate on the grain, and then they commenced talking about watermelons and potatoes; it was about

watermelon-time. Then I walked up to the ram myself; nobody was along with me; then I started off to the house, and they came after me—both Kissinger and my brother, Herman J. Eppler. From there we went home.

Q. 13. Was the visit, when you found that logs had been cut in the grove, while your brother Herman was agent for Mr. Draper, or was it before he became agent?

A. After he became agent.

Q. 14. Apart from what you now know of the date of your brother's agency, would you be able, of your own unaided recollection, to state the year when you made that visit?

A. I couldn't say no date—only it was in the latter part of the year. I couldn't tell what year he became agent.

Q. 15. The paper appointing him agent is dated March 8, 1877; you have recently been informed of this fact, have you not?

A. Yes, sir.

Cross-examined by Mr. Jacobs, de bene esse:

Cross-Q. 16. At whose request did you come here to give this deposition?

A. Mr. Beers'.

Cross-Q. 17. Did he subpoena you to come here?

A. Yes, sir.

Cross-Q. 18. When?

A. About the 7th or 8th of May, I think.

Cross-Q. 19. When did you come down to Philadelphia in obedience to the subpoena?

A. On the 8th of May.

Cross-Q. 20. Who, if any one, came with you?

A. My brother, Herman J. Eppler.

Cross-Q. 21. He brought you directly to this hotel from the station, did he?

A. Yes, sir.

Cross-Q. 22. Did he come with you from Marysville?

A. Yes, sir; on the same train.

Cross-Q. 23. Did you and he have any conversation at Marysville, or on the train coming down, with regard to the matters concerning which you have testified?

A. We did talk about them there trees one time at Marysville, a good while ago—a couple of months. I asked him whether he knew about

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them trees being cut at that time, and he said he did. Coming down in the train we didn't talk any concerning this matter, because he was part of the time in the smoking-car and the rest of the time he was sleeping.

Cross-Q. 24. Who, if anybody, had been to see you on the part of the complainants in this case before Mr. Beers subpoenaed you?

A. Not anybody; but William Fenn was talking to me one time—yes, there was two men there one time; I think one of them was Drawbaugh.

Cross-Q. 25. My question asks who, if anybody, was to see you on behalf of the complainants, that is to say, the Bell Telephone Company?

A. Not anybody excepting Beers.

Cross-Q. 26. Did you talk with him about the matters concerning which you have testified before he subpoenaed you?

A. I did, about castrating them pigs, and about the time me and my brother was there talking about the fertilizer, and so on.

Cross-Q. 27. Is that all that passed between you and Mr. Beers?

A. I believe that is all. Somebody came to the store and I had to go inside, and there was no more said about it.

Cross-Q. 28. How long was that before Mr. Beers subpoenaed you?

A. Somewhere about ten days, I think.

Cross-Q. 29. Did no one on behalf of the Bell Telephone Company talk to you in the meantime about the matter of Kissinger's ram or anything relating to it?

A. No, sir.

Cross-Q. 30. After you came here to this hotel on the 8th of May, whom did you meet and talk with upon the subject?

A. Not anybody.

Cross-Q. 31. You don't want us to understand, do you, that from the time you arrived here on the 8th day of May up to the time you took the witness-stand this morning, you had no conversation with anybody on the subject of Kissinger's ram or anything relating to it?

A. Excepting when I came upstairs. I talked with Storrow some, but not with any outsiders.

Cross-Q. 32. Is Mr. Storrow the only person with whom you talked upon the subject since you came here on the 8th of May?

A. Yes, sir.

Cross-Q. 33. When did you first talk with him upon the subject?

A. I can't recollect whether it was the first, or second day I was here.

Cross-Q. 34. Was any information given you since you came here,

with regard to any dates or facts connected with the matters concerning which you have testified?

A. No, sir.

Cross-Q. 35. Who informed you that the paper appointed Herman J. Eppler agent for Mr. Draper is dated March 8, 1877?

A. I never knew when it was dated, only he told me himself, personally, that he was agent, still.

Cross-Q. 36. When did he tell you so?

A. He told me before them trees was cut down, and at the time the trees was cut down he said he was acting as agent for Draper, and he wanted to know who cut the trees.

Cross-Q. 37. Did he never tell you anything about the date of his appointment, or the date of any paper appointing him?

A. No, sir.

Cross-Q. 38. And, as I understand you, nobody else ever did; is that correct?

A. Yes, sir; excepting my brother Herman told it himself—that he was agent for Draper.

Cross-Q. 39. I am not asking you whether or not you were ever informed that your brother Herman was agent for Mr. Draper, but whether he or anybody else ever informed you at what date he was appointed such agent?

A. No, sir.

Cross-Q. 40. Have you ever been shown by anybody any paper purporting to be a power of attorney from Mr. Draper to your brother Herman?

A. Not to my recollection; I didn't read them, if I did see them anywhere.

Cross-Q. 41. And you have no recollection of ever having seen any paper purporting to give him authority to act as agent for Mr. Draper, have you?

A. Not while he was acting agent.

Cross-Q. 42. Have you ever, since he has ceased to act as agent, seen any such paper?

A. I don't recollect whether I saw it. They wanted me to go agent for Draper after he quit, but whether they showed the papers or not I do not know. I told them I could not, and didn't want to have anything to do with going agent for him.

Cross-Q. 43. When was that?

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A. The last day of February, 1882, when I bought my brother, Herman J. Eppler, out.

Cross-Q. 44. Then, as I understand you, you have no recollection of ever having seen any paper purporting to give your brother, Herman J. Eppler, authority to act as agent for Mr. Draper; and if there is, or ever was, any such paper in existence, you have no recollection that you were ever informed, or knew the date of it; is that correct?

A. Yes, sir.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
23d day of May, 1884.

FRED. M. OTT,
Examiner.

SIMON G. EPPLER.

2.30, P. M.

Examination resumed.

Present, Mr. Storrow for complainants and Mr. Hill for defendants.

ELI W. WISE, *being produced, sworn, and examined, saith:*

Examined by Mr. Storrow:

Q. 1. Are you the Eli W. Wise whose testimony for the defendants is found on page 926 of the defendants' sur-rebuttal record?

A. I am.

Q. 2. In your former deposition, and particularly in your answers 16, 17, and 18, page 929, and cross-answer 61, page 934, you said that you saw the ram at Mr. Draper's place and in operation, about the beginning of May, 1877; you have since then had an opportunity to study the matter over; will you state your present recollection and belief as to the time when you first saw the ram at Mr. Kissinger's place?

[*Objected to as calling for mere present opinion.*]

A. My present recollection is that I was mistaken as to date or time, because it having been walled, and as it appears of record it was walled in November, '78, and as it appears that it could not have been walled in 1877.

Q. 3. You testified in your former deposition that Mr. Drawbaugh was at Marysville and visited the cemetery with you in the summer of

1877; what is your present recollection and belief as to whether he and you did visit the cemetery together during that summer?

[*Same objection.*]

A. My present recollection is that we did.

Q. 4. You testified in your former deposition that Mr. Drawbaugh left with you a bill against Mr. Kissinger for the ram; what is your present recollection as to whether Mr. Drawbaugh did or did not at some time leave such a bill with you?

A. My present recollection, unaided by a date, is that he did leave a bill, which could not have been in the summer of '77 in consequence of the ram being walled up at a subsequent date, and did hand me said bill at some later visit.

Q. 5. While you lived at Marysville did Mr. Drawbaugh come to your store once only, or a number of times?

A. A number of times.

Q. 6. In your former deposition you testified that the ram was walled in with stone so that the top of the ram would be within a few inches of the top of the level of the ground. When you testified to that did you know that Mr. Jesse Wagner had testified and had produced his book with an entry of the walling up of the ram in November, 1878?

A. I did not.

Q. 7. Has Mr. James W. Brooks been to see you recently with reference to Mr. Kissinger's ram; and if so, when did he come to see you about it?

A. Last Monday, May 19th.

Q. 8. Had Mr. J. W. Beers spoken with you on the subject of the ram and your recollection on it, before Mr. Brooks came to see you last Monday?

A. He had.

Q. 9. About how long before?

A. Some eight or ten days—possibly only eight.

Q. 10. When did you come to Philadelphia?

A. Wednesday afternoon of this week.

Q. 11. Who was the first person connected with this case, on either side, whom you saw and talked with after you reached Philadelphia?

A. Mr. William Fenn was the first person I met.

Q. 12. Was that the evening when you arrived, or a subsequent evening?

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A. The evening I arrived.

Q. 13. Did Mr. William Fenn that evening ask you to go anywhere with him, and if so, where?

A. He asked me to call around to the Colonnade hotel to see him, but he did not say at what time I should call.

Q. 14. Did he ask you to go around with him that evening, or call that evening?

A. My present recollection is that he didn't ask me to go around that evening.

Q. 15. Has Mr. William K. Fenn met you to-day, and spoken with you about this case, or spoken to you about the testimony in it?

A. He met me on the street this A. M. of this day. He hurriedly said a few words in connection with it. I believe that is all I can answer to that.

Cross-examination, de bene esse, by Mr. Hill:

Cross-Q. 16. When you testified in this case at Harrisburg, you testified from your own independent recollection; and you believed, at that time, that that testimony was correct and true; is that the fact?

A. I am testifying on my own independent recollection now, but being unaided at that time—without date—found that I was in error.

[Answer objected to as not responsive.]

[Question repeated.]

A. I presumed it to be true at that time, or I wouldn't have given it, undoubtedly.

Cross-Q. 17. When and where did the change in your belief as to the matters referred to in your testimony here take place?

A. After seeing the record of Mr. Jesse Wagner's bill of expense for walling in ram, I guess we will say.

Cross-Q. 18. When and where did you see that record?

A. I am not positive whether Mr. Brooks or Mr. Storrow showed me the record as it appeared in evidence; it was this week; Mr. Storrow showed it to me in this city; if Mr. Brooks showed it to me it was in the borough of Marysville.

Cross-Q. 19. I judge, then, that the change in your belief took place after you arrived here in Philadelphia, Wednesday evening, May 21; am I right?

A. Not right.

Cross-Q. 20. I judge, then, that the change in your belief took place after Mr. Brooks came to see you at Marysville, May 19, 1884; am I right?

A. Yes, sir.

Cross-Q. 21. Had you already changed your belief at the time you came down here, Wednesday evening, May 21?

A. Didn't I answer that before? Certainly I had.

Cross-Q. 22. Your change of belief, then, took place while Mr. Brooks was to see you at Marysville, May 19, did it?

A. From evidence as appears on record my mind was prompted to correct former errors.

Cross-Q. 23. That prompting took place while Mr. Brooks was to see you May 19, 1884, did it?

A. Yes, sir.

Cross-Q. 24. Up to that time your recollection and belief had always remained the same as when you testified at Harrisburg, had it?

A. Have not I answered that?

Cross-Q. 25. No; I do not think you have, and for that reason I ask you now.

A. It had, until I saw evidence which is on record, showing me that I was mistaken as to time or date.

Cross-Q. 26. You came here to Philadelphia at the request of the Bell Telephone Company, did you?

A. I did.

Cross-Q. 27. You have referred to a talk which you had with Mr. J. W. Beers about eight or ten days prior to Mr. Brooks' visit of last Monday. Did Mr. Beers come to see you?

A. I don't know whether he came to see me; he was in the store; I can't say whether he came to see me on this business—simply a conversation.

Cross-Q. 28. Mr. Beers has been for some time assisting the Bell Telephone Company in looking up their evidence, has he not?

A. Common report says so.

Cross-Q. 29. What conversation did you and Mr. Beers have at the time when he spoke to you, as you have testified?

A. Cannot repeat any portion of it.

Cross-Q. 30. When you met Mr. Fenn here in Philadelphia last Wednesday evening, the meeting was accidental, I suppose, was it?

A. Yes, sir.

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Cross-Q. 31. Did you tell Mr. Fenn then that you were going to modify your testimony in any respect?

A. I have no recollection that I did.

Examination taken, reduced to
writing, and by the witness sworn
to and subscribed before me, this
23d day of May, 1884.

ELI W. WISE.

JOSHUA R. MORGAN,
Notary Public, Special Examiner.
[Notary seal.]

Recess until 7, P. M.

ELIAS F. GARMAN, *being produced, sworn, and examined, saith:*

Examined by Mr. Storrow:

My age is forty. I am now living in York county, just below New Cumberland. I am an iron-workman at the steel works on the opposite side of the river from where I live.

Q. 1. Do you know Jacob Evans, a miller, who recently lived at Eichinger's mill in York county?

A. I do, sir.

Q. 2. Do you know John M. Fisher, whose deposition, recently taken, is on page 2103 complainants' proofs?

A. I do.

Q. 3. Do you know George Ditlow, who lives on the Ross farm near New Cumberland, and whose deposition, recently given, is on page 2122 complainants' proofs?

A. Yes, sir.

Q. 4. They have testified that Mr. Ditlow made a visit to Mr. Fisher on one Sunday last summer, and that Mr. Elias Garman was present; are you that Mr. Garman, and were you at Mr. Fisher's last summer with Mr. Ditlow?

A. I am the man, sir.

Q. 5. In what part of the summer was that visit? What was going on on the farm at that time?

A. The particular work at that time was hay-making.

Q. 6. Did you see Mr. and Mrs. Jacob Evans while you were at Fisher's upon that visit?

A. I did, sir; on that day.

Q. 7. Did you see Mr. John C. Comfort while you were at Mr. Fisher's place that day?

A. Yes, sir.

Q. 8. Did you hear any conversation between Mr. Comfort and Mr. or Mrs. Evans that day at Mr. Fisher's place; and if so, please state what you heard them say, where you were at the time, and the circumstances under which it took place?

[*Objected to as immaterial, calling for hearsay, and because no foundation has been laid for it in the examination of Mr. Evans, and as otherwise incompetent.*]

A. Well, we were sitting on the fence, right alongside of the road, Mr. Evans being there in search of a child that was lost, and being under the impression that it had fallen into the race. His being there was brought around by the supposition that the child had fallen into the race. He was going to the dam, just a short distance above us, to shut off the water for the purpose of looking for the lost child, when the news was brought down that the child had wandered up to Mr. Conley's, a neighbor. Well, I suppose we may have set there and talked about the weather and the crops for maybe a few minutes, before Mr. Comfort came along and stopped and addressed Mrs. Evans, asking her what she thought of the talking-machine at the present time, turning to Mr. Evans and asking Mr. Evans the same question, Mr. Evans making the reply that it was about the same as it was before—that he never seen one there, and he didn't think there ever was one there.

Q. 9. When did you first mention this conversation to any one, that you remember, and how did you come to mention it?

[*Objected to as immaterial and irrelevant.*]

A. Well, to the best of my knowledge that conversation wasn't impressed on my mind till about corn-husking time, when we were husking corn for Mr. George Ditlow, when Mr. Ditlow from the West, a cousin of George Ditlow's—I don't know what his first name is—came into the field, stating that Mr. Evans was at Harrisburg, and testified in favor of the Drawbaugh telephone—that he had seen them there at Drawbaugh's. It seemed to me very strange that he should say to Comfort that he had not saw any, and going to Harrisburg and testifying the reverse. It seemed something very strange, to my mind.

Q. 10. When did Mr. Comfort first speak to you about this conversation?

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A. Not above three weeks ago.

Q. 11. Did you, or not, ever go to see George Ditlow about this conversation, at Mr. Comfort's request?

A. I did not, sir.

Q. 12. Did Mr. Comfort ever ask you to go to see George Ditlow about it?

A. No, sir; he did not.

Q. 13. Did anybody ever ask you to go to see Mr. George Ditlow about it?

A. There did not, sir.

Q. 14. Did anybody ever come, on behalf of the Bell Company, to see you about this conversation before Mr. Comfort came, about three weeks ago?

A. There did not.

[The entire deposition above objected to, on the ground that the alleged conversation is testified to have taken place with the knowledge of John C. Comfort, one of the complainants' agents, whose knowledge of it is in law the complainants' knowledge, and yet the complainants, during the examination of Mr. Evans, laid no foundation for the introduction of this kind of testimony; and, without waiving this objection, or any other objection heretofore taken to this deposition, or to any interrogatory in it, the respondents cross-examine, de bene esse.]

Cross-examined, de bene esse, by Mr. Hill:

Cross-Q. 15. Name all the persons who were present at the time of this alleged conversation.

A. I suppose that means all the persons who were within hearing distance, does it?

Cross-Q. 16. Name all the persons who were present, and we will endeavor to find out hereafter about their distance from each other.

A. John M. Fisher, Mr. George Ditlow, Mr. Comfort, and a lady with him that I did not know, Mr. Evans and Mrs. Evans, and R. A. Ross, and the witness himself.

Cross-Q. 17. If I understand you correctly, you, Mr. Ditlow, Mr. Ross, Mr. Fisher, Mr. and Mrs. Evans were together, and Mr. Comfort with a lady came driving along and stopped, and held this conversation, and then drove along. Am I right?—and if not, wherein am I wrong?

A. Not together—present; simply meaning that we weren't within hearing distance—not all.

Cross-Q. 18. Did Mr. Comfort get out of his buggy?

A. No, sir.

Cross-Q. 19. Who wasn't within hearing distance of Mr. Comfort during that conversation?

A. R. A. Ross.

Cross-Q. 20. How long did Mr. Comfort stop there, between the time when he drove up and the time when he drove away?

A. But a very few minutes to the best of my recollection.

Cross-Q. 21. Well, about how many minutes?

A. Well, he might have stopped there probably ten or fifteen minutes. It might have been more or less, but very little either way, I know.

Cross-Q. 22. Were you within hearing distance of Mr. Comfort all the time?

A. I was, sir.

Cross-Q. 23. And you heard all that was said?

A. Yes, sir; I might have heard all that was said; I paid very little attention; I was just quoting a part of the conversation.

Cross-Q. 24. Now, quote anything else that was said by Mr. Comfort at that time.

A. Well, the question was asked Mr. Comfort how they were succeeding, or how they were getting along, in this telephone affair, Mr. Comfort making the remark, as near as I can recollect, that "we are getting along all right;" but that he would have to go; that he wanted to go away; and then he drove off. That is the sum and substance, sir, of the conversation to the best of my recollection.

Cross-Q. 25. I don't quite understand what the conversation was, yet, and, therefore, ask you to repeat the entire conversation that took place while Mr. Comfort was there, just as fully and accurately as you possibly can, and in the exact way that it took place.

A. Well, we will start, I suppose, then, with Mr. Comfort's coming there. When Mr. Comfort drove up, as a natural consequence, it was gentlemanly for one or the other to make mention of the weather; I believe it was Mr. Comfort made that remark on coming up, to the best of my knowledge; and then the conversation took place as stated before—addressing Mrs. Evans in the first place, asked her her opinion of the telephone, or talking-machine, I believe it was called, if I am correct; he turns direct to Mr. Evans, asking him what his opinion was in regard to the talking-machine, and Mr. Evans stating that he never saw

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one nor didn't think that there was one there, following, to the best of my knowledge, with the question which I stated before—asking Mr. Comfort how they were getting along with the talking-machine, Mr. Comfort stating that he thought they were getting along all right.

Adjourned until May 24, 1884, at 10, A. M.

MAY 24, 1884, 10, A. M.

Examination resumed.

Present, Mr. Storrow, Mr. Howson, for complainants, and Mr. Hill, Mr. Jacobs, and Mr. Dixon for respondents.

Cross-Q. 26. Then, as soon as Mr. Comfort answered that he thought they were getting along all right, he drove right away; is that the fact?

A. To the best of my knowledge, there was nothing more—simply a farewell.

Cross-Q. 27. Where was Mrs. Evans standing when Mr. Comfort first addressed her?

A. As near as I can say, directly behind the buggy.

Cross-Q. 28. And where was Mr. Evans standing at the same time?

A. Mr. Evans happened to be sitting on the fence.

Cross-Q. 29. When Mr. Comfort was talking to Mrs. Evans, how near was Mr. Evans to Comfort's buggy?

A. Well, he might have been from three to six feet away, to my recollection?

Cross-Q. 30. When Mr. Comfort was talking to Mr. Evans, how near was Mr. Evans to Comfort's buggy?

A. Within about from there to my feet.

Cross-Q. 31. Did Mr. Comfort's buggy remain right where it was all the time while he was talking to Mr. Evans and to Mrs. Evans?

A. There might have been a little jerking of the buggy from the horse. It is not natural that it should have stood exactly on the same spot, but if it moved any, it wasn't a great deal.

Cross-Q. 32. Comfort didn't drive along from where Mrs. Evans was to where Mr. Evans was, then?

A. To the best of my knowledge, there was no driving from the time he stopped until he drove away.

Cross-Q. 33. Did Mr. Comfort get out of the buggy?

A. He did not.

Cross-Q. 34. How near were you to Mr. Comfort during all the time of his conversation with Mr. and Mrs. Evans?

A. Taking a review of the situation, I might have been three feet—not to exceed eight feet—to the best of my recollection.

Cross-Q. 35. Then you heard the entire conversation, did you?

A. I should have, from the distance I was away—hearing it as a disinterested person at the present time being.

Cross-Q. 36. Were you sitting on the fence all the time while Comfort was talking to Mr. and Mrs. Evans?

A. To the best of my recollection, I was.

Cross-Q. 37. And was Evans sitting on the fence all the time while Comfort was talking to him and his wife?

A. According to the best of my recollection, Mr. Evans stepped off of the fence, and stood between Mr. Fisher and I, and leaned against the fence.

Cross-Q. 38. How near was Mr. Evans to you during the conversation between Comfort and Mr. and Mrs. Evans?

A. He might have been five inches, or he might have been twelve inches; to the best of my recollection, not any more.

Cross-Q. 39. When he sat on the fence, who sat next to him on each side?

A. According to the best of my recollection it was Mr. Fisher on the left and myself on the right.

Cross-Q. 40. Where was Ditlow at that time?

A. To the best of my knowledge Ditlow was directly to the right of me.

Cross-Q. 41. How near to you?

A. Within easy reach.

Cross-Q. 42. Where was Mr. R. A. Ross while Comfort was talking to Mr. and Mrs. Evans?

A. According to the best of my knowledge he was at the opposite side of the road a little to the right of us under a mulberry tree, or on it—I don't remember precisely which—at the time of the conversation.

Cross-Q. 43. How far was Mr. Ross from Mr. Comfort during Comfort's conversation with Mr. and Mrs. Evans?

A. According to my best recollection of the distance it might have been twenty feet, and it might have been forty.

Cross-Q. 44. You don't know how much of the conversation between Comfort and Mr. and Mrs. Evans Ross heard, do you?

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A. I do not know, sir, to the best of my knowledge, that he heard any; but he might have heard sharper than some of the rest of us.

Cross-Q. 45. Did Comfort and Ross have any conversation together?

A. No, sir; not any—not to my recollection.

Cross-Q. 46. Did Comfort and you have any conversation together?

A. Not to my recollection—more than to return the compliment of a “good-day,” as he came up.

Cross-Q. 47. Did Mr. Comfort and Ditlow have any conversation together?

A. Not to the best of my recollection.

Cross-Q. 48. Did Comfort and Fisher have any conversation together?

A. Not to my knowledge; no, sir.

Cross-Q. 49. Didn't Comfort, when talking to any of the party, refer to the lost child, and remark that the lost had been found?

A. To the best of my recollection, not; the remark was made by the lady that was with Comfort, if I recollect correctly.

Cross-Q. 50. Was the lost child there with his parents at the time?

A. I rather think, to the best of my recollection, that the child had walked down towards its home about the time Mr. Comfort arrived.

Cross-Q. 51. Don't you remember that during that conversation Mr. Comfort asked Mr. or Mrs. Evans whether Mr. Jacobs and Mr. Drawbaugh had been over to see them?

A. Not to the best of my recollection; it wasn't called to my memory at all—that wasn't—in the conversation.

Cross-Q. 52. Don't you remember Mr. Evans telling Mr. Comfort in that conversation that Mr. Jacobs and Mr. Drawbaugh had been down to see him?

A. Not to the best of my recollection; I don't call that conversation to remembrance—that portion of it—at all.

Cross-Q. 53. Don't you remember that after that portion of it Comfort asked Evans what Jacobs and Drawbaugh had said, and Evans replied, “They did not say much about it?”

A. I don't call the conversation to recollection at all—that portion of it—that question.

Cross-Q. 54. Don't you remember that after that portion of it Evans asked Comfort which side was going to win, and Comfort replied that the Bell Company was, for Drawbaugh hadn't got “one to three?”

A. The words of that portion of it I don't recollect exactly as they

are stated. There was something said as to which party was going to win, but, as a disinterested party paying very little attention, I don't recollect what was said clearly enough to give a precise statement of it—of the words.

Cross-Q. 55. Then you don't recollect either the words or the substance of any such conversation as is embodied in my 49th, 51st, 52d, and 53d interrogatories, or any of them?

A. The "substance" of it would be what? I am not exact enough to understand it thoroughly. I stated before that I could not remember the precise language; to the best of my knowledge I couldn't remember of hearing anything of the kind, or call it to recollection.

Cross-Q. 56. You didn't hear Comfort ask Evans anything about Jacobs or Drawbaugh having been down to see him?

A. I can't call it to recollection at all, sir—anything of the kind.

Cross-Q. 57. You didn't hear Evans tell Comfort that Jacobs and Drawbaugh had been down to see him, or anything that they said to him, did you?

A. I can't call that to recollection at all; my memory don't serve me to it.

Cross-Q. 58. You have mentioned Mr. R. A. Ross being there. After Comfort and Evans had finished their conversation, didn't Comfort say something about Mr. R. A. Ross' father?

A. He might have, but I don't call it to recollection at all; if there was, I don't remember it.

Cross-Q. 59. In your 25th answer you stated that when Comfort asked Evans what his opinion was in regard to the talking-machine, Mr. Evans stated that he never saw one, and didn't think that there was one there. When Mr. Evans used the expression that he didn't think that there was one *there*, did he state where it was that he never saw one, and where it was that he didn't think there ever was one; or did he just use the word "there" without stating what place he meant?

A. If my memory serves me correctly, at the end of the sentence he used it in this language:—"there at Milltown."

Cross-Q. 60. Then you did not state the conversation correctly in your previous answers, did you?

[*Objected to as incompetent and not warranted by the preceding testimony.*]

A. As correctly as I could without making an exact memorandum, which I did not do at the time being; there might be a word here and

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there brought to my recollection by rehearsing it over and over again, that I had just not stated, or probably misplaced, but giving the main bearing of that conversation as called to my recollection, it was given to the best of my knowledge.

Cross-Q. 61. And it is your recollection now that Evans said "there at Milltown," is it?

A. It seems to direct my mind to those words—that they were used.

Cross-Q. 62. Didn't he say "there at Drawbaugh's shop?"

A. My mind doesn't run that way—doesn't serve me that I heard anything of that kind—to the best of my knowledge Drawbaugh's shop was not mentioned.

Cross-Q. 63. When he referred to not believing that something was "there" what did he say that something was? Did he use the word "telephone" or "talking-machine," or what word?

A. That something was "talking-machine." That was the only name I heard given it during the conversation.

Cross-Q. 64. Who used that name "talking-machine" during the conversation? Mention everybody that you heard use the word "talking-machine" in that conversation.

A. Mr. Evans and Comfort are the only two, to my recollection, that talked anything of the talking-machine indirect. If my memory serves me right, I, outside of that, made the expression to Mr. Ditlow that him and I didn't need talking-machines—that we were supplied with sufficient mouth. If my memory serves me right, that was all the language which was used in regard to talking-machine. The machine wasn't mentioned after that, nor before.

Cross-Q. 65. Who first spoke the words "talking-machine" in that conversation? Was it Mr. Comfort or Mr. Evans?

A. It was Mr. Comfort, my memory serving me correctly.

Cross-Q. 66. And when Mr. Evans replied, did he (Evans) use the word "talking machine" in his reply?

A. If my memory serves me right, in reply to the question asked him, he did not.

Cross-Q. 67. And the word "talking-machine" didn't come from Evans' mouth at all during the conversation, did it?

A. In a question asked Mr. Comfort, if my memory serves me right, Mr. Evans used the word "talking-machine"; if my mind serves me right, it was used in that language.

Cross-Q. 68. Repeat the exact words of that question which Mr. Evans asked Mr. Comfort, in which Mr. Evans used the word "talking-machine."

A. The exact words is more than I can give you.

Cross-Q. 69. Then give the substance of that question.

A. There was a question asked in some form—the exact form I can't give; I can give you an idea—of whether they were going to continue the examination of witnesses, or whether it was going to the court. Some such question was asked. I don't pretend to word it, because I can't.

Cross-Q. 70. Then you don't remember all of the conversation, and can't state it exactly; is that the fact?

A. I have stated that I remember the portion of the conversation which was indirectly brought to my remembrance by an after transaction. If it hadn't been for that transaction I don't suppose I would ever have given it a thought.

Cross-Q. 71. I judged that to be the fact. Now, will you tell us what talking-machine was the subject of that conversation between Mr. Comfort and Mr. Evans there that day?

[Objected to as incompetent, and not cross-examination.]

A. According to the way I understood the conversation, to the best of my knowledge, hearing of Mr. Evans being to Philadelphia and testifying in favor of the Bell Telephone Company—or talking machine, or whatever you might call it—it was brought to my mind that it must be the Drawbaugh talking-machine that they were talking about.

Cross-Q. 72. What Drawbaugh talking-machine—Daniel Drawbaugh's?

[Same objections.]

A. To my knowledge, we didn't have any other talked of in the country—no other Drawbaugh machine.

Cross-Q. 73. How did you know that Daniel Drawbaugh ever had a talking-machine?

[Same objections, and as assuming what the witness has not stated.]

A. I never knew he had any, only from hearsay.

Cross-Q. 74. When did you first hear of it from hearsay?

[Objected to as not cross-examination, as calling in terms for hearsay, and as otherwise incompetent.]

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A. The clearest answer to that question would be simply this: To the best of my knowledge, when I first heard that there was a suit brought against the so-called Bell Telephone Company.

Cross-Q. 75. When did anybody, on the part of the Bell Telephone Company, first speak to you about your giving testimony in this case?

A. To the best of my knowledge, it might have been about seventeen days before I was brought here to Philadelphia.

Cross-Q. 76. Who spoke to you then about it?

A. Mr. Comfort.

Cross-Q. 77. When were you brought here to Philadelphia?

A. Last Sabbath eve, one week ago.

Cross-Q. 78. To-morrow it will be two weeks?

A. Yes, sir.

Cross-Q. 79. Have you been here ever since you were brought here?

A. I have, sir.

Cross-Q. 80. To whom have you talked, while here, about what took place that day when Comfort had that conversation with Mr. Evans, as you have testified?

A. The majority of talk I have done about that has been with Mr. Storrow, I believe.

Cross-Q. 81. Mention all others to whom you have talked about it while here?

A. Mr. Comfort and I have had a few words about it—comparatively few, and I spoke a few words to Mr. George Ditlow about it.

Cross-Q. 82. How recently have you talked to Mr. John M. Fisher about it?

A. I haven't conversed with Mr. John M. Fisher on the subject, sir; not to my recollection.

Cross-Q. 83. Have you read Mr. Fisher's testimony in this case?

A. I have read no testimony, sir; I may have looked at half a dozen questions—just saw the testimony lying, and merely glanced at them as I turned the leaves over. I believe I am safe in saying that I have not read more than two answers.

Cross-Q. 84. You were here while Mr. George Ditlow was testifying, were you not?

A. Yes, sir.

Cross-Q. 85. State all the conversation that you had with him while he was testifying; I mean all the talk you had with him regarding what

took place that day while Mr. Comfort and Mr. and Mrs. Evans were together.

A. I believe the main part of the conversation was that I asked him the question, "Was anything asked about R. A. Ross?" and he said there was, and he asked me then whether I remembered that he was there—whether I was positive about it. I told him I did, and stated to him the circumstances and the situation, and he said he had made a mistake in his statement, and I says to him, "If you see it, and can correct it, why, correct it." That is my recollection of the conversation we held.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
24th day of May, 1884.

FRED. M. OTT,
Examiner.

ELIAS F. GARMAN.

MAY 24, 1884, 10 o'clock, A. M.

Examination resumed.

Present, Mr. Storrow for complainants, and Mr. Dixon for defendants.

ABRAHAM C. DISSINGER, *being produced at 11.27, A. M., affirmed and examined, saith:*

Examined by Mr. Storrow:

Complainants' counsel observing that the defendants had entered on the record that the witness was not produced until half past 11 o'clock, states that his associate, Mr. Smith, left early this, Saturday, morning in order to reach home by Sunday; that his associate, Mr. Howson, was expected here at 10 o'clock, but was unavoidably detained away, and that none of defendants' counsel were here at 10 o'clock.

Respondents' counsel states that as he entered the elevator of this hotel to come up to this room this morning to commence the session here, he looked at his watch and observed that the time then was precisely two minutes after 10 o'clock, and he came immediately to this room, arriving in this room not more than two minutes later.

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"omplainants' counsel states that he observed the time when the defendants' counsel arrived, and looked at his watch and observed that it was ten minutes past ten o'clock before they arrived.]

Q. 1. Are you the same Abraham C. Dissinger who testified last winter at Harrisburg as a witness for the defense, and whose deposition is printed on page 558 of the defendants' sur-rebuttal record ?

A. Yes, sir.

Q. 2. You there stated a conversation which you said took place on the Kissinger farm late in the fall of 1876, and you said in answer 36: "I am confident I haven't been on the farm since 1876, for any purpose, except that I was up in the hollow at the lower end of the farm one Sunday, but when I was there I was not within sight of the house or barn; but I have not been near the house or barn since we made the assessment in the fall of '76." The whole value of your testimony depends upon the certainty of your recollection as to the date; I wish you to state now whether you feel confident that the time you heard of the ram, as stated in your testimony, was in 1876; state fully the state of your mind on that subject at the present time.

[Objected to as assuming, leading, and incompetent.]

A. Well, sir, after thinking some about the dates, I have been somewhat in doubt for fear that I may have got '76 for '79; my first impression was, of course, that it was in '76, but I would not say now, positively, that it was, on account of assessing two terms; I may have been in error as to dates.

Q. 3. Have you ever seen the ram on that farm?

A. No, sir.

Q. 4. Had Mr. James W. Brooks been to see you in reference to this matter; and if so, where did he see you about it first?

A. On Monday evening last, between four and five o'clock.

Q. 5. Has Mr. J. W. Beers talked with you about it before that; and if so, how long before that?

A. About two weeks ago he spoke to me about it, but I don't recollect what he said; I think he asked me whether I was positive it was in '76 or '78.

Recess until 2.30, P. M.

2.30, P. M.

Examination resumed.

Present, Mr. Storrow for complainants, and Mr. Hill and Mr. Dixon for defendants.

Cross-examination waived by Mr. Hill.

Examination taken, reduced to writing, and by the witness affirmed to and subscribed to before me, this 24th day of May, A. D. 1884.

ABRAM C. DISSINGER.

JOSHUA R. MORGAN,

Notary Public, Special Examiner.

[*Complainants' counsel state that their testimony in rejoinder is now closed.*]

I hereby certify that the foregoing depositions of witnesses on behalf of complainants, in rejoinder, were begun at Philadelphia, Pennsylvania, on the tenth day of April, 1884, and completed on the twenty-fourth day of May, 1884, having been adjourned from time to time as set forth in the foregoing record; and that the several witnesses were duly sworn or affirmed by me, and subscribed to their several depositions in my presence, as set forth, except such witnesses as were by consent of counsel examined before Joshua R. Morgan, Esq., a notary public of the city of Philadelphia, Pennsylvania, as appears upon the record; also that the exhibits referred to were produced before me, as stated, and were left in my custody, and that the stipulations of counsel were signed in my presence.

Witness my hand, this second day of June, 1884.

FRED. M. OTT,
Examiner.

IN THE
Circuit Court of the United States
FOR THE SOUTHERN DISTRICT OF NEW YORK.

American Bell Telephone Company

vs.

The People's Telephone Company.

IN EQUITY.

COMPLAINANTS' CLOSING TESTIMONY.

HARRISBURG, PA., *June 14, 1884, 10, A. M.*

Examination begun before Fred M. Ott and Paul Charlton, special examiners.

Present, Mr. Storrow, Mr. Smith, and Mr. Howson for complainants, and Mr. Hill, Mr. Jacobs, and Mr. Church for respondents.

HENRY M. BITNER, *being produced and affirmed, upon examination saith:*

Examined by Mr. Storrow:

Q. 1. Are you the same Henry Mr. Bitner whose deposition for the complainants was taken at Philadelphia this spring? (See complainants' record, vol. iii, p. 1929.)

A. Yes, sir.

Q. 2. Mrs. Eliza Collins, in her deposition given for the defendants in sur-rejoinder, (see p. 32,) said in substance that you as supervisor, and Mr. Andy Shell as workman, rebuilt the foot-bridge across the Yellowbreeches at Zinn's clover-mill in the fall of 1873. Did you, while you were supervisor, build, or cause to be built, any foot-bridge across the Yellowbreeches?

[Objected to as incompetent, the witness having once already positively testified on the subject, and the present effort being to introduce testimony merely cumulative in its character.]

This objection to apply to all questions in the same line of examination.]

A. No, sir; I did not build or cause to be built.

Q. 3. Did Mr. Andy Shell ever build a foot-bridge across the Yellowbreeches for you while you were supervisor?

A. No, sir; he did not.

Q. 4. Mr. Henry S. Rupp, a witness called for the defendants in sur-rejoinder, (see p. ,) testified in substance that on April 18, 1874, you settled your supervisor accounts with the auditors, who were Mr. Henry S. Rupp, Mr. Isaac Zimmerman, and Mr. James Brooks. Did you settle your accounts with those gentlemen as auditors?

A. Yes, sir.

Q. 5. In whose handwriting is this book?

A. My own handwriting.

Q. 6. Some of the items in it are entered in ink and some are entered in pencil; are all of them in your handwriting?

[Objected to as already answered and as leading.]

A. Yes, sir; they are all in my handwriting.

Q. 7. What are the accounts which are in that book? What are they about?

A. Well, these are roads—work that was done on the public road or roads.

Q. 8. Done when?

A. In the summer of 1873?

Q. 9. Is it the work done by you while you were supervisor in 1873?

A. Yes, sir; the work that I had done or got done by men.

Q. 10. Does it or does it not include all the work that you did or got done while you were supervisor in 1873?

A. It includes all.

Q. 11. I find in it, on the 11th page, the following entry: "Andrew Shell, work and lumber \$3.50;" what kind of work was it that Andrew Shell did for you while your were supervisor?

A. Well, such as fixing small road-bridges or a little work on the road.

Q. 12. Is that the Andrew Shell who died in the spring of 1877?

A. Well, I don't recollect at what date he died, but he's the only Andrew Shell that I know of; he must be the man.

Q. 13. Will you look through the book and state whether there is any other entry in it which refers to Andrew Shell?

A. There is no other there; no, sir.

Q. 14. Will you state whether or not this book was the account which you presented to the auditors when you settled at the end of your term of office?

A. Yes, sir, this was it; this was the book.

[Examiner has numbered the pages of the book in red ink for convenience in reference.]

Q. 15. I notice that there are items written in pencil on pages 3, 5, 7, 9, 10, 12, and on the page at the very end of the book, which the Examiner has numbered 14; were those entries in pencil included in your settlement with the auditors?

[Objected to as leading.]

A. Yes, sir; they were all included.

Q. 16. How did you come to make those entries in pencil in addition to the entries in ink?

A. Well, there were bills brought in after the book was fixed up—bills that were back yet which I received.

[The complainants request the Examiner to add together the footings written in ink at the bottom of pages 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, and to add to them the correct footing of all the items written in ink on page 12.]

The Examiner does so, and finds the total amount to be \$766.45.

The complainants request the Examiner to note that the pencil entries on pages 3, 5, 7, 9, 10, 12, 14, are not included in the above footing.

The Examiner so notes.

Complainants request the Examiner to add together all the pencil items in the book.

The Examiner finds the total to be \$41.46.

Complainants request the Examiner to add together the two totals he has thus found.

The Examiner does so, and finds the grand total to be \$807.91.

Complainants request the Examiner to note that page 5 of Mr. Bitner's book contains item: "H. M. Bitner, supervisor, days 14,—\$21.00" and to deduct that amount from the grand total above mentioned.

Examiner does so, and finds the remainder to be \$786.91.

The complainants call the attention of the Court to the fact that this total charge, \$786.91, is the same as the first item in the settlement of Mr. Bitner's account, entered in the auditor's book produced and testified to by Mr. Rupp, in defendants' sur-rejoinder, p 227.

Counsel for defendants objects to the foregoing testimony of the witness and certificates of the Examiner relating to the above-mentioned book upon the ground that said book has not been properly proven; neither has it appeared to be a book of original entries; and further objects to the use of said book unless it be offered in evidence.

The complainants offer the book for the inspection of defendants' counsel in the same manner as the book referred to in Mr. Rupp's deposition was offered for inspection; and the complainants do not feel authorized nor called upon to confiscate the book in which this witness has the account of his official dealings.

Defendants' counsel calls attention to the fact that the book referred to by Mr. Rupp is a public record of the township of Lower Allen, Cumberland county, Pa., and contains the accounts and settlements of said township up to the present time, and that the accounts of the witness, Henry M. Bitner, as supervisor of said township for the year 1873, were passed upon and finally settled by the township auditors ten years ago, and that therefore the cases are not parallel; and further calls attention to the fact that, during the deposition of Mr. Rupp, complainants did not ask to have the township book offered in evidence, and did not object to the testimony based upon it, or the entries copied upon the record from it, upon the ground that it was not offered in evidence.]

Q. 17. Did A. B. Shank borrow this road-book of yours from you last year?

A. Yes, sir; he did.

Q. 18. Did he take it away with him and keep it some time?

A. Yes, sir.

Q. 19. Have you, during any part of this week, been at the office of the Drawbaugh company's lawyers where they have their witnesses?

A. I was with Mr. Jacobs.

Q. 20. Were you there yesterday forenoon?

A. I was at the office where the witnesses are—not just in with Mr. Jacobs—not yesterday.

Q. 21. Were you there day before yesterday—in with the witnesses, or in Mr. Jacobs' office?

A. Yes, sir.

Q. 22. Were you there the day before that?

A. Yes, sir.

Q. 23. Who asked you to go there?

A. Abram Shank.

Q. 24. While you were there, did you read any deposition, or a part of any deposition, that has recently been given; and if so, whose?

A. I was reading some—well, George F. Haring and John Fetro's, Mrs. Collins'—don't know her first name.

Q. 25. While you were there, did you see there John M. Fisher, who lives over by Fishing creek, in your county?

A. I seen a man—I believe his name is John M.—the first name I wouldn't be positive—from Fishing Creek valley.

Q. 26. The man you refer to is Fisher, a farmer, who lives over by Eichinger's mill—is he not?

[*Objected to as leading.*]

A. Yes, sir.

[*Deposition objected to for reasons above given.*]

Cross-examined by Mr Jacobs, de bene esse:

Cross-Q. 27. In your sixteenth answer, you said that the entries in pencil in the book before you “were bills brought in after the book was fixed up;” when was it “fixed up?”

A. I can't just give you the date—in the winter sometime.

Cross-Q. 28. In the winter of what year?

A. Well, of '73—or, I don't just recollect if it come then or in the beginning of '74.

Cross-Q. 29. You mean the winter of 1873-4, do you?

A. Yes.

Cross-Q. 30. I observe that each of the pages from 1 to 13, inclusive is headed with the year-date 1874—is that not correct?

[*Objected to as a misstatement of the book, inasmuch as half of the pages contain at the top "1878" also, immediately under the "1874."*]

A. Yes, sir; the book is dated that way.

Cross-Q. 31. Would that help you to say whether the book was "fixed up" before or after the first of January, 1874?

A. Well, that would seem to say that it was "fixed up" in '74.

Cross-Q. 32. Might it not have been "fixed up" three or four months after the first of January, 1874?

A. No, not so long as that.

Cross-Q. 33. Are you positive about that?

A. Not four months—it couldn't have been, I think.

Cross-Q. 34. Might it have been three months?

A. It could hardly have been three months.

Cross-Q. 35. Are you positive that it could not?

A. Three months? I made settlement the spring of '73—I couldn't tell the precise date it was "fixed up."

Cross-Q. 36. Have you any idea as to how long before you made settlement your book was "fixed up?"

A. I couldn't tell the length of time.

Cross-Q. 37. Your recollection with regard to the time when the book was fixed up is not at all clear, is it?

A. All I recollect is I went and settled up soon after it was fixed—soon after I got it.

Recess until 2, P. M.

2, P. M.

Cross-examination of witness resumed:

Present, Mr. Chauncey Smith for complainants, Mr. Jacobs for respondents.

By Mr. Jacobs:

Cross-Q. 38. I observe that page 1 of the book concerning which you have been testifying is headed, "1874—Work on roads," under which are the following entries:

"1873 George Bricker		
Paid (in pencil.)	May	
	June two days and half	\$3.12
	July	
	Sep.	
	Allen Floid	
	June 13 one Day work	\$1.25
	Sep. John Wire	
	Oct. two days and half	\$3.12
	Sept. 24 George Seip	
	one half day	.62
	<hr/>	\$8.11"

I wish to know when the work was done to which those entries relate.

A. The summer of '73—the work was done.

Cross-Q. 39. Will you tell us where, and in what part of the summer of 1873, those several items of work were done?

A. Don't the book show that to you? I haven't kept a precise account of just what part of the summer they were done. Well, just whereabouts in the township they were done I won't undertake to say—they were done on the roads, fixing up the bridges—piking, and scooping, and so forth.

Cross-Q. 40. Then you have no distinct recollection with regard to the particular work which those men did, nor the time or place, when or where it was done. Is that so?

A. Yes, sir; that is so. There's no occasion to know it ten years afterwards. The book gave satisfaction to the auditors. That was all that we needed.

Cross-Q. 41. Referring to the entry relating to George Bricker: are we to understand from the fact that it is preceded by the names of four months that his two days and a half's work were scattered over four months in 1873?

A. Well, I'd have to be ruled by the dates of the man's working; I can't tell the precise time now; it was in the summer of '73; if I have dates to the months it was about that time.

Cross-Q. 42. I merely want you to interpret your own entry upon the book. What does the entry of those four months opposite the name of George Bricker and the amount of his work mean?

A. Am I to understand that you want to know what he worked at each of them months? I can't understand your question.

Cross-Q. 43. You have already said that you did not remember what particular work he did, or whereabouts in the township he worked.

What I want to get at is when he did the work with which he is credited, and for that purpose I am asking you to interpret your own book entry; and I now ask you whether we are to understand, from the fact that his name and the amount of his work are set opposite the names of four months, that his work was scattered throughout those four months?

[Objected to, because witness, in answer to cross-interrogatory No. 41, has already said that he has to be ruled by the dates of the man's working—"I can't tell the precise time now—it was in the summer of '73—if I have dates to the months, it was about that time"—which clearly answers the present question.]

A. You ask me that question: "When he did that work," and the book shows when he did it.

Cross-Q. 44. I will put the question in another form: If the entry of the names of the months May, June, July, and Sept., opposite the name of George Bricker, and the amount of his work, means anything, what does it mean?

[Objected to because the witness has already stated that the months show the time about when the work was done, and that the book shows the time when the work was done.]

[Objection objected to because it does not correctly state the testimony of the witness, and because it tends to direct him how to answer the question now propounded.]

A. It means he worked in them months.

Cross-Q. 45. You did not make that entry in this book until sometime in 1874, possibly several months after January 1, 1874; is not that correct?

A. I wouldn't name precise when the book was made.

[The book and the account was satisfactory to the auditors, and I can't do any more on it. It contained each man's account, and the amount of work he done—that satisfied the auditors, and I think it will everybody, or ought to.]

[That part of the answer in brackets—said brackets being inserted by the Examiner at the request of Mr. Jacobs—objected to by counsel for defendants as not responsive and volunteered.]

Cross-Q. 46. You testified this morning that the book was fixed up some time in 1874; was that entry made at the time the book was "fixed up" in 1874, or not? I mean the entry relating to George Bricker.

A. Well, at the time the remainder were "fixed up"—all at the one time.

Cross-Q. 47. You mean that all of the entries in that book were made at one time, do you?

A. All them written with ink, as nearly as I know; all them written with pencil-mark were made after.

Cross-Q. 48. What had you to go by in making the entry relating to George Bricker?

A. Well, either by the account that he gave me or the account which I had taken when he done the work—I ain't quite certain—one or the other. Does it look as if it wasn't correct when you ask me such questions as them?—look as if he hadn't done the work?—the auditors didn't seem to intimate in that way.

[All after "one or the other" objected to as irresponsible and volunteered.]

Cross-Q. 49. Do you remember or not whether he gave you an account, in writing, of the work he had done?

A. I don't remember; I thought I had explained it to you that either one way or the other it came.

Cross-Q. 50. Passing now to the next account, that of "Allen Floid," dated "June 13,"—that entry was not made in that book until more than six months after the date set down, was it?

A. Well, I can't say precise when the entries was made; the book shows that the work was done then—in that year.

[Last part of the answer objected to as irresponsible and volunteered.]

Cross-Q. 51. The entry, I suppose, was made along with the other entries in ink at the time the book was "fixed up" in 1874, was it not?

A. Well, some were not far from the time—as far as I know; the book certainly gave satisfaction; it's not likely after ten years I would be explaining every little bit—it gave satisfaction, and does yet. It gave satisfaction to the auditors, and it's the same thing now that it was then.

[All after "as far as I know" objected to, as irresponsible and volunteered.]

Cross-Q. 52. What do you mean by "somewhere not far from the time—as far as I know?" Is there any doubt in your mind as to whether or not all the entries in ink were made at the same time?

A. They were made very nearly at the same time, to the best of my recollection.

Cross-Q. 53. Have you any recollection upon that subject at all?

A. Well, they were made in '74—during the early part of '74 they were made.

Cross-Q. 54. What I want to know is whether you have any recollection that all the entries in ink in the book were made at one time in 1874, or whether they might have been made at different times, between the first of January, 1874, and the time when the auditors settled your account.

A. Well, I settled with the men about February or March, and they were made before I settled with them in the township.

Cross-Q. 55. Question repeated.

A. I thought I had explained that they were made in that time—when you ask me that again, I don't know what I'm to understand fully.

Cross-Q. 56. What did you have to go by in making that entry in the book relating to "Allen Floid?"

A. Well, the same as the others—either by an account which they gave me, or an account which I took myself. If I was present I took it; if I wasn't I had to take an account which they gave me.

Cross-Q. 57. Then you don't remember whether or not you were present when he did the work?

A. No, I wouldn't be positive about that—that I was.

Cross-Q. 58. Have you any more definite recollection with regard to the other two items entered upon page 1, namely, those relating to John Wire and George Seip? Can you tell us what you had to go by in making those entries, and whether or not you were present when that work was done?

A. Well, they were made out at Lisburn—I don't quite recollect about their work. I don't think I was present when that work was done at Lisburn. It didn't suit me much to superintend; I was out from time to time to see how the work was getting done. Well, all the same as the others—either by account which I took, or which they gave me—that's the way I done always—no supervisor could be present when all the work was being done—that's the only way.

Cross-Q. 59. Then, as I understand, whenever you were present when work was done you kept the account yourself, and when you were not present you took the accounts which those who did the work themselves kept; is that correct?

A. Yes, that's about the way it run, in the most of cases; sometimes if I had a lot of men together I would tell one of the men to take the account of the whole lot—if I had several of them.

Cross-Q. 60. The accounts which you yourself kept were kept in writing, were they not?

A. Well, principally so—I don't know that every bit of it was—all the jobs that was getting done I knew at the time, or soon after—I knew about what was getting done, and how it was getting done.

Cross-Q. 61. Did you settle for the work immediately after it was done, or did you wait until all of the work was over before you settled for any of it?

A. I paid some few men that were very poor almost at once—the balance of the men I paid when the work was done—in the spring—the spring of 1874.

Cross-Q. 62. You kept an account in writing, I suppose, did you not, of the cash you had paid out?

A. Well, I think so—I'm not just positive.

Cross-Q. 63. The accounts which you did not keep, but which were kept by others, and handed in to you were in writing, were they not?

A. Well, I wouldn't be positive whether they all were or not; some were and some maybe not.

Cross-Q. 64. Referring now to the second page of the book, I find that it is headed, like the first page, "1874 work on roads;" and I find that it contains the following entries:

"1873 Jacob Heck	
Sep. 23, 24, one day and half	\$1.87
Sep. 29. John G. Heck	
one Days work	1.25
Sep. 23, 24, 29 William Fettrow	
three Days work	3.75
Daniel Draver	
Oct. 13, One Days work	1.25
James Finney	
Oct. the 13, 14, 15, 16, 17, 18½	
five days and half	6.87
	<hr/>
	\$14.99"

Do you remember what you had to go by in making the entry relating to Jacob Heck?

A. Well, them men were all Lisburn men; I didn't superintend many jobs there; I had to take their account—either theirs or some one person that superintended—I don't think they each one gave me an account—some one person.

Cross-Q. 65. You don't remember who that person was?

A. No, I wouldn't be certain. There was a man (Joel Fettrow) that superintended a few little jobs out there, and Michael Smyser; I don't recollect any others, if I mistake not.

Cross-Q. 66. I find at the top of page four the following entry:

"1874 work on Roads
1873 Joel Fettrow
April 24 Sundry
May 15 work on
June 6&c Roads, \$25.00"

Is that the Joel Fettrow to whom you refer in your last answer?

A. This is the same man; there is no other that I know of—not in our township.

Cross-Q. 67. What did you pay him per day?

A. The same as I paid the others. I almost forget what the regular laboring price was; the same as the others got.

Cross-Q. 68. It would appear from the entry already referred to, relating to Allen Floid, that it was \$1.25 per day; does that agree with your recollection?

A. Yes; that would be about it.

Cross-Q. 69. Then it would appear that Joel Fettrow had been allowed for twenty days' time, would it not?

A. Yes; I guess so. Yes; that would be it.

Cross-Q. 70. After the entry relating to Joel Fettrow at the top of page 4, with the exception of the following:

"Bought of J. S. Starr
Aug. 15 to 6 lbs spike at 7 cts .42"

I find in the book no date prefixed to any of the items; will you explain how that happened?

A. Well, I hardly quite know. My mind runs that I thought it wouldn't be necessary to give them. It was all that summer and every one was the same price.

Cross-Q. 71. Didn't the accounts which you yourself kept, or which others kept for you, contain any dates?

A. Well, I don't quite know; some of them, I think, did; I don't know that they all did, though.

Cross-Q. 72. I find at the foot of page eleven this entry:

"Abraham Shell
work 1.87"

Do you remember what you had to go by in making it?

A. Well, I don't know rightly what work he did.

Cross-Q. 72½. And you don't know what you had to go by in making the entry; is that it?

A. Well, I'd have had to take his account if I hadn't seen it done; I'm not certain.

Cross-Q. 73. About the middle of page ten I find the following:

"Samuel Bitner

Sundry work 16.75"

Do you know what you had to go by in making that entry?

A. He gave me the account; I recollect pretty well about his work; he's a brother of mine. Repaired bridges—road bridges, &c.—out there in the neighborhood of the forge.

Cross-Q. 74. At the bottom of the same page is the following:

"Daniel Weaver,

Sundry work 15.62"

Do you know what you had to go by in making that entry?

A. Well, that was near home; I superintended that myself; I recollect that.

Cross-Q. 75. And you kept an account of that, did you?

A. If my memory serves me right I did.

Cross-Q. 76. At the bottom of page six I find the following entry:

"Jacob Barber

to Sundry work

plank Logs

Hauling &c

107.56,"

do you know what you had to go by in making it?

A. Well, that I was ruled by his book; he charged me with plank, logs, &c.; though he had sent me a bill, too; that I went to him to settle.

Cross-Q. 77. Will you look through that book, and point out to the Examiner all the items of work at which you recollect of being present and superintending?

A. Well, there's John Bigler's [pointing to page 9] and Daniel Weaver's [pointing to page 10]; them are two that I recollect of; the others I can't fully recollect of. I was—well, I was part of days—I couldn't tell which ones—and when I went and only seen I didn't charge.

[The counsel for defendants requests the Examiner to certify that the item of John Bigler referred to is as follows:

"John Bigler

3.37"

The Examiner so certifies.]

Cross-Q. 78. At the bottom of page three I find the following entry:

" Winfield Sherich	
June 17 Hauling with	
Oct. 13 two Horses	
to work one day	4.25
	1.00"

the one dollar being written in pencil; do you remember of putting it there yourself?

A. Yes, I claim to have put it there myself; what it was for I don't now know.

Cross-Q. 79. Do you know when you put it there, because you find it there?

A. No, not at what date; it was after the ink writing some time.

Cross-Q. 80. Do you have any recollection at all about it, or do you merely infer that you put it there?

A. Well, I feel satisfied that he gave me an account to that effect.

[Objected to as irresponsible.]

Cross-Q. 81. Do you remember that he did, or do you only infer that he did because you find those figures there?

A. Well, I am certain I didn't put anything then there wasn't account given me for, or take anything from—that I'm certain.

[Objected to as irresponsible.]

Cross-Q. 82. Question repeated.

[Complainants state that the objection is without foundation, the question having been perfectly answered.]

A. Well, after ten years, I couldn't say positive as to that—but I didn't put to it—I'm positive of that—something that was given me as a bill, or some work; I'm positive of that.

Cross-Q. 83. Have you any recollection at all about it?

[After waiting a considerable time for an answer, counsel for defendants requests the Examiner to repeat the question to the witness.]

[Question repeated.]

A. Well, I recollect of bills being given to me—but, after not seeing the book for ten years, I wouldn't recollect just who gave them to me. At the time, or soon after, I would have knew that they were correct.

[Objected to as irresponsible.]

Cross-Q. 84. I will try to make the question as plain as I can. Have

you or have you not any recollection that Winfield Scherich gave you an account or a bill of that \$1 ?

[Question objected to because it is immaterial—because it has been repeatedly asked and repeatedly answered.]

Counsel for defendants requests counsel for complainants to point out upon the record where it has been answered.

Complainants refer to answers 80, 82, 83, as perfectly and accurately stating the condition of the witness' memory on the subject.]

A. Well, I believe I can't just recollect of it.

Cross-Q. 85. Have you or have you not any recollection of entering that 1.00 upon the book ?

A. I don't recollect of it, but yet I feel positive that I did do it.

Adjourned until Monday, June 16, 1884, at 10 o'clock, A. M.

JUNE 16, 1884.

Present, Mr. Smith for complainants ; Mr. Jacobs for respondents.

Cross-examination of the witness resumed by Mr. Jacobs, de bene esse :

Cross-Q. 86. As you have no recollection of entering the 1.00 upon the book, and have no recollection of Winfield Scherich giving you an account or a bill for that amount, what is there about that entry to indicate that you made it ?

A. Well, from the fact that no other one did it—that I put those things down myself.

Cross-Q. 87. Then there is nothing about the entry itself to indicate that you did it yourself, is there ?

A. Well, there's nothing ; but I'm about as certain as I can be that no other one put figures in that book but myself.

[Last part of the answer objected to as irresponsible.]

Cross-Q. 88. On page 9, at the top of the page, I find the following entry :

"John Sheely	
and Brothers	
quarring stone	
hauling &c.	\$12.85
<i>for stone</i>	4.00",

the last line (in italics) being in pencil ; will you examine the figures

4.00, and tell me whether they are not written heavily over some other figures in pencil, which have been partially erased?

A. Well, it does appear to show so—some little marks under, I appear to see.

Cross-Q. 89. Do you remember when those figures were changed?

A. No, sir; I don't.

Cross-Q. 90. Do you remember of having changed them yourself?

A. I don't know of the change; but I know that no other one put figures there but me.

[Last part of the answer objected to as irresponsible and volunteered.]

Cross-Q. 91. I call your attention to the account of Jacob Springer, on page 12, as follows:

“Jacob Springer
Hauling Stone
for Stone

15.50
2.60,”

(the figures 2.60 being pencil) Will you examine the figure 2, in pencil, and tell me whether it has not been changed from a figure 3?

A. It appears to me that it's just a double line that I drew the pencil a second time down—I don't hold a very steady hand.

Cross-Q. 92. After the lapse of ten years your recollection of the work that was done for the township whilst you were supervisor is not at all clear, is it?

A. Well, I claim it to be middling clear after thinking over it.

Cross-Q. 93. In your answer, No. 17, you said that Mr. A. B. Shank had borrowed this book from you last year; in whose possession has it been recently, and up until it was produced here on Saturday morning?

A. Well, Mr. Comfort got the book—whether he had it in possession all the time or not, I wouldn't know.

Cross-Q. 94. Do you mean John C. Comfort, one of the agents of the Bell Telephone Company, in this case?

A. Yes, sir.

[Complainants' counsel states that the witness is in error; that the book was brought from Mr. Bitner's house by the complainants' counsel and Mr. Comfort together, and has been in the personal custody of complainants' counsel exclusively ever since; that it was obtained at the witness' house from Mrs. Bitner.]

Statement objected to, particularly because it interferes with the cross-

examination of the witness on a matter concerning which defendants' counsel has a right to test the knowledge and recollection of the witness.]

Cross-Q. 95. Who laid the tax during the year you were supervisor ?

A. Henry Rupp—Henry S.—I believe its the main man.

Cross-Q. 96. Do you remember whether there was any one else besides Mr. Rupp, or was he the only one who assisted ?

[Objected to as collateral and immaterial.]

A. Jacob Eshleman and I were supervisors ; we were there.

Cross-Q. 97. Any one else besides Jacob Eshleman, Mr. Rupp, and yourself ?

A. I don't recollect of any others.

Cross-Q. 98. In your answer, No. 24, you said that while you were at Mr. Jacobs' office last week you read the depositions, or parts of the depositions, of George F. Haring, John Fetro, and Mrs. Collins. Will you tell us how you came to read them ?

A. Well, Mr. Shank handed me—no, Mr. Shoop handed me the book.

Cross-Q. 99. Please reflect a moment, and tell me whether it is not the fact that you yourself picked them up off of the table where they were lying and read them without being requested to do so by any one, or without your attention being called to them by any one ?

A. Mr. Shoop handed it to me in the first place, and afterward I picked it up myself.

Cross-Q. 100. What Mr. Shoop was that ?

A. Well, we call him "Squire Shoop"—the only Shoop I recollect of seeing there.

Cross-Q. 101. What kind of a book was it that you say Mr. Shoop handed you ?

A. Well, I would call it a pamphlet book.

Cross-Q. 102. How thick was it ?

A. Well, it didn't have much thickness—[pointing to a loosely-folded newspaper] about as thick as that, maybe—perhaps a little thicker.

Cross-Q. 103. How positive are you that he handed it to you ?

A. Well, I'm positive that he handed it to me.

Cross-Q. 104. Is it not the fact that you went into Mr. Jacobs' private office, whilst he was absent, and got reading matter from his desk ?

A. No, not any time but that time you called me in, I wasn't there

Cross-Q. 105. You read a good deal during the several days that you were in Mr. Jacobs' office last week, did you not?

A. Oh, I didn't get much read; I'm no fast reader; I wasn't many hours at it, either.

Cross-Q. 106. Tell us what all you did read whilst you were there.

A. I don't just know what all I read; I read some of what John Fetro said, and George F. Haring, and Mrs. Collins; that was the main part, I believe.

Cross-Q. 107. That is all you can remember of reading, is it, whilst you were there?

A. I did read some more, but I don't just recollect what all.

Cross-Q. 108. Where was the book which you referred to lying when you picked it up?

A. On that table, or whatever you might call it, in the center of the room. I believe you call it—or in its room. Well, Mr. Shank handed it to me there, and afterward picked it up—or Mr. Shoop; I said Shank.

Cross-Q. 109. Had Mr. Shoop himself been reading it when you got it, or how did he hand it to you?

A. He asked me whether I wanted to read.

Cross-Q. 110. Did you do your reading when he handed you the book, or when you afterwards picked it up?

A. I read some then and afterwards when I picked it up.

Cross-Q. 111. Please reflect and tell us whether the thing he handed you and the thing you afterwards picked up, as you have stated, were not different things.

A. The same book I read afterwards that he handed me.

Cross-Q. 112. Are you positive of that?

A. Well, as positive as I handy can be by reading what Haring, and John Fetro, and Mrs. Collins had said.

Cross-Q. 113. What else did the book contain?

A. I don't recollect what more I was reading. They were talking and laughing in the room, and I didn't pay much attention to any part of it.

Cross-Q. 114. Where did Mr. Shoop get the book when he handed it to you, as you say?

A. Off of the table.

Cross-Q. 115. Was he talking and laughing with the rest of them at the time?

A. I don't recollect who all were talking.

Cross-Q. 116. Then, as I understand you, Mr. Shoop asked you

whether you wanted to read, and handed you a book, which you afterwards picked up from the table, and that book, you say, contained the depositions of Mr. Haring, Mr. Fetro, and Mrs. Collins; and that you don't know what else that book contained—and that the book which he handed you was one which he picked up from the table; that at the time they were talking and laughing around in the room—is that all that you remember about it?

[*Counsel for complainants inquires: "About what?" Not understanding what "it" refers to.*

Counsel for defendants replies that he intends the question to apply to the circumstances under which the witness got the book and read it.

Counsel for complainants suggests that the question is not in terms confined to that, because it refers to the contents of the book as well; and suggests that if he wishes to ascertain whether the witness recollects any more about how he came to read the book it would be well to frame a question which would clearly express that idea.]

A. Well, when he made a move to get the book he asked me whether I wanted to read any particular thing, or something like that—and I told him not—if I recollect right; I told him I wouldn't mind to read something—well, he handed the book then and I told him I wouldn't mind to read. I think that's about all.

Recess until 2, P. M., this day.

2, P. M.

Present, same counsel.

Cross-examination closed.

Deposition taken, reduced to writing, and by the witness affirmed and subscribed to in my presence, this 16th day of June, 1884.

PAUL CHARLTON,
Notary Public, Special Examiner.

H. M. BITNER.

JUNE 14, 1884, 2, P. M.

Mrs. SARAH MOORE, *being produced, sworn, and examined, saith :*

Examined by Mr. Storrow :

I am the wife of Robert O. Moore, of Rye township, Perry county, Penna., about two miles and a quarter above Marysville.

Q. 1. Are you the daughter of Mr. David Cowens, who has already testified in this case?

A. Yes, sir.

Q. 2. When were you married?

A. The 6th of April, 1875.

Q. 3. Where did you and your husband go to live immediately after you were married?

A. Thompsontown, Juniata county, Penna.

Q. 4. When did you move away from Juniata county, and where did you move to when you moved away from there?

A. To my father's, at Marysville, in the spring of 1878.

Q. 5. What time in the spring of 1878?

A. About the 18th of February.

Q. 6. How long did you live at your father's?

A. Two years.

Q. 7. Where did you move to then?

A. About a mile from Marysville, down the river; we are in the borough, though—down below the railroad bridge.

Q. 8. How long did you live there, and where did you move to next?

A. We lived there four years, and moved then to where we live now, near three miles above Marysville.

Q. 9. How long ago did you move to where you live now?

A. The 4th of March of this year.

Q. 10. You say you lived at your father's two years from the first of February, 1878; did you live in your father's family?

A. A little over two years; yes, sir.

Q. 11. What did your husband do during those two years?

A. Farmed for my father.

Q. 12. Farmed your father's farm on the shares, do you mean?

A. Yes, sir.

Q. 13. Had you known Mr. George W. Kissinger and his family before you were married?

A. Yes, sir.

Q. 14. When you returned from Juniata county to your father's in February, 1878, did you go to Mr. Kissinger's place any that spring and see his family?

A. Yes, sir; I went there very often that summer.

Q. 15. How did the Kissinger family get their water for household use that spring and summer?

[Objected to as immaterial, and also as not competent or proper evidence at this stage of the case, but as being merely cumulative upon a subject first gone into fully in the complainants' rebuttal.]

A. Carried it up that hill, as far as I know.

Q. 16. Do you remember any conversation with any of the women of the Kissinger family that spring or summer about carrying water from the spring for household use?

[Same objection, and further objected to as leading, so far as time is concerned.]

A. I said I wouldn't like to live there unless Kissinger would carry the water up the hill; I wouldn't like to live there like they did.

Q. 17. Do you know whether there was afterwards a ram put in there to force the water up to the house?

[Same objection, and further objected to as grossly leading.]

A. Yes, sir.

Q. 18. What did the water run into up near the house?

[Same objection.]

A. A barrel.

Q. 19. What did it run out of into the barrel?

[Same objection.]

A. A kind of a spout; a round pipe it was.

Q. 20. Were that barrel and pipe there near the house when you first began to go there that spring and summer?

[Same objection, and also as leading.]

A. No, sir.

Q. 21. Where is that barrel now?

[Same objection.]

A. We have it; we bought it at Mr. Kissinger's sale.

Q. 22. It has been stated that Mr. Kissinger bored some logs to make pipe for his ram, and that your father went down once to see

about them while he was boring them; do you remember anything about your father's going down there to see about Mr. Kissinger's log pipes; and if so, what do you know?

[*Same objection.*]

A. Father went down to see him, and Mr. Kissinger said he could have the auger to bore some, if he wanted to; and father came home and looked in our timber-land for some chestnut, but we didn't have any large enough and so he didn't make any.

Q. 23. Where were you living at that time, and when was it?

[*Same objection.*]

A. In the summer of 1878; I was living with father.

Q. 24. What made your father think about making pipes that year?

[*Same objection, and further objected to as calling for hearsay, or for witness' mere opinion, or both.*]

A. Ours was just nailed together, and there was roots of apple trees—there was a little orchard there where ours were—apple-tree roots growed in and stopped the water.

[*Entire deposition objected to as not admissible at this stage of the case, and as merely cumulative on points on which the complainants have, in their rebuttal, exhausted their right to take testimony.*]

Cross-examined by Mr. Hill, de bene esse:

Cross-Q. 25. What time to-day did you arrive in Harrisburg?

A. 8.20, A. M., I think it is, that it comes in.

Cross-Q. 26. Did you go to the Bolton House?

A. Yes, sir.

Cross-Q. 27. Have you been there ever since?

A. Yes, sir.

Cross-Q. 28. Who first spoke to you about testifying in this case?

A. Mr. Beers.

Cross-Q. 29. How long ago was that?

A. About a month ago, I think, as near as I can tell.

Cross-Q. 30. Has Mr. Beers been to see you about it since?

A. No, sir.

Cross-Q. 31. Has Mr. Brooks ever been to see you about it?

A. Yes, sir.

Cross-Q. 32. When was he to see you?

A. Last week one day; I don't know just what day it was.

Cross-Q. 83. I suppose you used to visit the Kissinger family before you were married?

A. Yes, sir.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me this
14th day of June, 1884.

FRED. M. OTT,
Examiner.

SARAH MOORE.

ROBT. O. MOORE, *being produced, sworn, and examined, saith:*

[*At request of respondents' counsel, Examiner notes that the witness is a colored man.*]

Examined by Mr Storrow:

My age is fifty-two; I live about two miles and a half from Marysville; up the Fishing Creek valley; I am a laborer and farmer together.

Q. 1. Is Mrs. Moore, who has just testified, your wife?

A. Yes, sir.

Q. 2. When were you married?

A. April 6th, 1875.

Q. 3. Where did you go to live when you were first married?

A. To Juniata county, near Thompsontown.

Q. 4. How long did you live there, and when did you move away, and where did you move to?

A. I lived there till February, 1878; I then moved to David Cowen's—my wife's father's—place, about one mile from Marysville.

Q. 5. How long did you live there, and where did you move to then?

A. I lived there two years, and then I moved below the Pennsylvania railroad bridge.

Q. 6. How long did you live there, and where did you move to then?

A. I lived there four years; this last spring I moved to where I live now—Fishing Creek valley.

Q. 7. While you lived with Mr. Cowens, as you have stated, did you know anything about their making any log-pipes at Mr. Kissinger's? and if so, state what you saw and what you heard about them at the time.

[*Objected to as not admissible at this stage of the case, but merely cumulative upon matters about which the complainants have exhausted their*

right to take testimony; and also as grossly leading and calling for hearsay.]

A. As I was passing along there I saw them have timbers trestled up. I made inquiry as to what they were doing, and I was told they were going to put a ram in to throw the water up to the house.

Q. 8. Whom did you make the inquiry of, and who told you this?

[Same objection.]

A. I think Mr. Cowens told me.

Q. 9. When did you make this inquiry—how soon after seeing these timbers?

[Same objection.]

A. After I got home, I inquired from the family; they were all present there together.

Q. 10. How soon after you went to live at Mr. Cowens' did this take place?

[Same objection.]

A. I think about this time of the year.

[Entire deposition objected to as inadmissible at this stage of the case, being merely cumulative upon matter of which complainants' right to put in evidence has ceased.]

Cross-examined by Mr. Hill, de bene esse:

Cross-Q. 11. You came down to Harrisburg with your wife this morning, did you?

A. Yes, sir.

Cross-Q. 12. And have been here ever since?

A. Yes, sir.

Cross-Q. 13. Did Mr. Beers ever come to see you about what you could testify to in this case; and if so, when, and how many times?

A. I think he stopped once or twice where I was working; I don't remember exactly when—a week or so ago, or maybe two weeks ago, or more.

Cross-Q. 14. Did Mr. Brooks ever come to see you about it?

A. Yes, sir.

Cross-Q. 15. Where were you working last before you were married?

A. I was working at Thompsontown.

Cross-Q. 16. Where did you do your courting?

A. Well, she lived in Mifflin a part of the time.

Cross-Q. 17. Where was she living when you were married?

A. She was at home at that time.

Cross-Q. 18. How long had she been living at home when you where married?

A. That I don't remember.

Cross-Q. 19. Did you visit her while she was living at home, before she was married?

A. I was there once or twice.

Cross-Q. 20. When you went down to marry your wife, how long did you stay around there at Mr. Cowens'?

A. I was there one night.

Re-direct by Mr. Storrow:

Q. Q. 21. You say that you were passing along the road when you saw these timbers on trestles; do you remember whether you were on foot, or with a team, and what errand you were on?

[*Objected to as not proper re-direct examination.*]

A. I had a team; I think I was hauling stone.

Q. Q. 22. Whom were you hauling stone for?

[*Same objection.*]

A. That I don't remember—whether I had been hauling them to the coal-chutes or to some building.

Q. Q. 23. Whom were you hauling stone for to the coal-chutes?

[*Same objection.*]

A. Jesse Wagner.

Re-cross, de bene esse, by Mr. Hill:

Re-cross-Q. 24. Whom were you working for in March and April, 1875?

A. In April I was working for James Wilson; I don't know whether I was doing anything in particular in the month of March.

Re-cross-Q. 25. Where does James Wilson live?

A. He lived then below Thompsontown; he lives now above Miffin, on Colonel Robinson's farm.

Re-cross-Q. 26. Whom did you last work for before you worked for James Wilson, in April, 1875?

A. I think I run a separator and clover-huller; my brother and me had one in partnership.

Re-cross-Q. 27. When you saw the timbers on trestles, as you state,

were you driving along the valley road that runs from Marysville up past the Kissinger place and in front of the Kissinger house?

[*Question objected to as ambiguous and misleading.*]

A. Yes, sir.

Re-cross-Q. 28. Were you riding on the wagon, or walking beside the team?

A. I suppose I was on the wagon, as I drove just two horses.

Re-cross-Q. 29. You don't remember, though, whether you were sitting on the wagon or not, do you?

A. I think I was on the wagon.

Re-cross-Q. 30. Were you driving down the road in the direction towards the river, or up the road, in the opposite direction?

A. I suppose I was going up when I first noticed it.

Re-cross-Q. 31. But you don't remember whether you were going up or down, do you?

A. Well, not in particular; I think I was going up, though. You could see it in either direction.

Re-cross-Q. 32. You never saw the logs or trestles except when you saw them sitting in the wagon on the road, did you?

A. No; I saw them from the road.

Re-cross-Q. 33. From what place in the road did you see them?

A. Down this side of the building towards Marysville.

Re-cross-Q. 34. How far down towards Marysville from Kissinger's house?

A. Well, it may be about a hundred yards that you can see in there towards the barn.

Re-cross-Q. 35. Where were the logs and trestles that you saw?

A. They were on the little bank there to the right of the barn.

Re-cross-Q. 36. How near the barn?

A. Well, I suppose it may have been twenty or twenty-five yards from the barn.

Re-cross-Q. 37. Were they right opposite the end of the barn, or were they up the hill from the barn, or were they down towards the run below the barn?

A. I think they were on that little bank just to the right of the barn.

Re-cross-Q. 38. You mean right opposite the end of the barn, do you?

A. Yes, somewhat in that direction—in an easterly direction from the end of the barn.

Re-cross-Q. 39. On a little bank between the fence and the run, were they?

A. I think that is where they were.

Re-cross-Q. 40. How far were you from those logs and trestles when you saw them?

A. I don't know the distance exactly; it may be a hundred and fifty yards—maybe more.

Re-cross-Q. 41. When you spoke about them in Mr. Cowens' family, who was it that said they had anything to do with the ram?

A. I don't understand you.

Re-cross-Q. 42. Who was it said that the logs and trestles were for the ram?

A. I just made inquiry, when I went home, as to what they were doing. I think it was Mr. Cowens said they were going to put a ram in there to force the water up.

Re-cross-Q. 43. I suppose you don't remember the exact words that Mr. Cowens, or whoever it was, used, do you?

A. I think just as I stated.

Re-cross-Q. 44. Are you prepared to swear that you remember the exact words that were used?

A. I think they were spoken just as I tell them.

Re-cross-Q. 45. Do you swear that they were spoken just as you tell them—in the exact words?

A. That is as near as I can remember; them is the words.

Re-cross-Q. 46. Tell me anything else that Mr. Cowens said to you in the year 1878, giving his exact words.

A. I don't remember anything in particular, I believe, now.

Re-cross-Q. 47. Then that one conversation is the only conversation which you remember in the year 1878, and of which you can give the exact words, is it?

A. Yes, sir; I don't think of anything else particularly.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
14th day of June, 1884.

FRED. M. OTT,
Examiner.

ROBT. O. MOORE.

JOHN WENBICH, *being produced, affirmed, and examined, saith:*

Examined by Mr. Howson:

My age is thirty-three; I reside at Steelton, Dauphin county, Pa. I am a carpenter.

Q. 1. In whose employment are you at present and what are your duties?

A. I am in the Steel Company's employment, attending to their houses—keeping them in repair, and so forth.

Q. 2. How long have you occupied that position?

A. Since the 14th day of February, 1883, up to this time.

Q. 3. Did you ever live in the borough of Marysville, Perry county; and if yes, when did you go there to live?

A. I went there in 1873.

Q. 4. At or about what time in 1873?

A. The first of March.

Q. 5. Down to what time did you continue to live in the borough of Marysville?

A. Till the first of March, 1881.

Q. 6. During one part of the period between the spring of 1873 and the spring of 1881 did you work for the Pennsylvania Railroad Company; and if yes, what at and where?

A. No, sir; I didn't work for the Pennsylvania Railroad Company—that is, as it was termed at that time.

Q. 7. What, if any, railroad company did you work for during any part of that time?

A. The Northern Central.

Q. 8. Whereabouts and at what work?

A. In the round-house, at car-repairing.

Q. 9. When did you begin so to work in the round-house?

A. On the 19th of October, 1875.

Q. 10. And down to what time did you continue at that work?

A. Five years and about five months.

Q. 11. You have stated that you went to live in the borough of Marysville in March, 1873. Where were you living, and how were you occupied, from the spring of 1873 to the spring of 1874?

A. Farming Mr. Theophilus Fenn's farm—living on the place.

Q. 12. From the spring of 1874 to October, 1875, when you say you

went to work in the round-house, where were you living, and what were you doing?

A. I was living in a house of my own. I bought a lot of ground from Theophilus Fenn. I was working at carpenter work here and there through the borough at whatever I could catch. Sometimes it was carpentering, and sometimes again it was something else.

Q. 13. Do you or not know Mr. George W. Kissinger, who formerly occupied what was known as the Draper farm, near the village of Marysville? If yes, how long have you been acquainted with him?

A. Yes; since 1870.

Q. 14. Did you or not ever work for Mr. George W. Kissinger while he was living on said Draper farm? If yes, in what year did you so work for him?

[Objected to as immaterial, and so far as this deposition is intended to have any relation to the question as to the time when the ram was put in on said farm, or ordered for the farm, or preparations made for it, the question is further objected to as inadmissible at this stage of the case, the evidence sought being merely cumulative, and upon matters on which the complainants have already exhausted their right to take testimony; these objections to apply to all other questions relating to such subject-matters.]

A. Yes; in 1875.

Q. 15. It has appeared in the testimony in this case that there was upon the said farm, and at or by the spring near the barn, an old log house that had, at one time, been occupied as a dwelling house; do you or not recollect that old log house?

A. I do.

Q. 16. Will you please give us a general description of that old log house, and tell us what condition it was in when you were working on the Draper farm in the year 1875, as you have stated?

A. Why, it was a house that was about or near all torn down, and looked very rough; the timbers wouldn't be fit for anything but rough usage. I helped to take several of the old logs away.

Q. 17. What, if anything, was done, if you know, with the old logs which you helped to take away?

A. We put up a pig-pen with what we could use.

Q. 18. Who do you mean by "we" in your last answer?

A. Mr. Kissinger and myself.

Q. 19. When did Mr. Kissinger and yourself build this pig-pen out of the logs of the old log-house?

A. In the summer of 1875.

Q. 20. Tell us what, if any, other work you did, or helped Mr. Kissinger to do upon the Draper farm in the summer of 1875.

A. I helped him to do some truck work, also repaired his thresh-machine, and I hewed some timber in the woods, or at the foot of the mountain—not all of it that I chopped there—taking it to the wood-pile and finishing the hewing of it—for to build a shed for to run his wagons in under and his kettles to boil apple-butter in.

Q. 21. Who, if you know, built the shed referred to in your last answer, and when was it built?

A. In the summer of 1875, by myself, with the assistance of Mr. Kissinger.

Q. 22. You stated, in your answer to the 20th question, that some of the timber which you chopped in the mountain for this shed you hewed at the mountain, while part of it was brought to the wood-pile and you hewed it there; how came you to hew part of this timber at the wood-pile, instead of hewing it all at the mountain?

A. Mr. Kissinger came to the mountain before I got through, and he allowed we would take it to the wood-pile and then he would have the chips there for use.

Q. 23. Whereabouts on the premises was that wood-pile?

A. On the north-west of the house.

Q. 24. Between the house and the barn or not?

[*Further objected to as leading.*]

A. No, sir; I would say to the side.

Q. 25. In hewing the timbers which you hewed at the wood-pile, upon what, if anything, did you support the timbers while you were hewing them?

A. On several blocks.

Q. 26. You have enumerated, among the work which you did, or helped to do, for Mr. Kissinger during the summer of 1875, the repairing of a threshing-machine; where was it that you did that work?

A. Back of the barn.

Q. 27. If, for any of the work which you did or helped to do for Mr. Kissinger in the summer of 1875, you had occasion to use car-

penters' trestles, will you tell us for what work you used them, and whereabouts you had them in use?

A. I used them back of the barn for cutting out ground-sills for fastening down horse-power of thresh-machine, and also I used the trestles for balancing cylinder of thresh-machine.

Q. 28. Referring again to the timbers prepared for building the shed to receive the wagons and apple-butter kettle, please tell us, as nearly as you can remember, how many of these timbers there were, and about the size of them?

A. Well, there was two pieces twenty feet long—as for the thickness, I can't tell—and three of them twelve feet long. As for the posts, they were old pieces of stuff that was laying around there; and the plate of shed was an old sapling. The weather-boarding of that shed, or boards that was used on it, was boards that he gathered up around the place; that is, Mr. Kissinger.

Q. 29. In what month, if you recollect, was it of the summer of 1875 that you built this shed for Mr. Kissinger?

A. That I can't just tell you definitely—what month, nor at what time—but this much I know, that they traveled down through the grain-field to the spring for water.

Q. 30. You have stated that the work done by you for Mr. Kissinger, and specified in your several answers, was done during the summer of 1875; while engaged on that work where did you get your meals?

A. With Mr. Kissinger and family.

Q. 31. While so working on the Draper farm in the summer of 1875, eating your meals at Mr. Kissinger's house, did you or not, at any time, see any wooden pipe, or any wooden pipe being made or bored?

A. No, sir; I did not.

Recess until 8, P. M.

Q. 32. Did you or not during that time see upon the premises any pipe-auger or other instrument for boring wooden pipe?

A. No, sir; I did not.

Q. 33. Did you or not during that time see any trench or trenches dug or being dug on the premises to receive pipe?

A. No, sir; I did not.

Q. 34. Did you or not during that time hear anything said by Mr.

Kissinger, or by his family, about boring or laying pipes, or about introducing a hydraulic ram upon the premises?

A. No, sir; I did not.

Q. 35. When asked at what time during the summer of 1875 you built the shed for the wagon and the apple-butter kettle, you stated that you knew "that they traveled down through the grain-field to the spring for water;" was this before, or after the harvesting of the grain that summer?

A. It was after the harvesting of the grain.

Q. 36. At or about what time is harvest in that region of country generally?

A. Well, it is about the first week in July—or the second.

Q. 37. Among the work done by you on the Draper farm in the summer of 1875, you specify the repairing of a threshing-machine; was it before, or after harvest that you did that particular job?

A. Before harvest.

Q. 38. Referring now again to the shed which you built for Mr. Kissinger that summer, will you tell us briefly on what part of the premises it was built?

A. It was built facing the barn from the house—north of the house—to the left-hand side facing the barn.

Q. 39. Do you know Mr. William K. Fenn, of Marysville, who has been present during your examination?

A. Yes, sir.

Q. 40. Did or did not that Mr. Fenn visit you recently at your home in Steelton; and if yes, about when?

A. Yes; he met me in this last winter at my place at Steelton.

Q. 41. Did he or not at that time ask you if you had any knowledge about the putting in of a hydraulic ram upon the Draper farm?

A. Yes, sir, he asked me; I told him that I had not.

Q. 42. Did he or not also ask you whether while you were working on the Draper farm you had seen any pipe there, or any auger for boring pipe?

A. He did; I told him that I did not.

[Entire deposition and each and every question and answer thereof objected to for the reasons stated in the objection immediately following interrogatory 14.]

Cross-examined, de bene esse, by Mr. Hill:

Cross-Q. 14. When were you last at the house or barn, or between the house and barn, on the Draper farm ?

A. The last that I was there, to my recollection, was at the completing of the shed.

Cross-Q. 44. When and where did you last see Mr. George W. Kissinger ?

A. How do I understand you—on the place, or^a off of the place, or now, or when ?

Cross-Q. 45. I mean when and where did you last see him anywhere, down to the present moment ?

A. Well, I have seen him this evening ; we have taken supper together at the Bolton House.

Cross-Q. 46. You referred to building a shed on the Draper farm ; how close to the house was that shed ?

A. It was at the north-west corner of the house ; and the south-east corner of the shed was within twenty feet of it, as near as I can get at it.

Cross-Q. 47. You have also referred to a wood-pile ; how close to the house was that wood-pile ?

A. Between the house and the shed ; that is, the wood-pile had been just where the shed is—where I put it.

Cross-Q. 48. I suppose you don't remember everything that you heard Mr. Kissinger or his family talking about while you worked there, do you ?

A. No, sir.

Cross-Q. 49. Doesn't harvest come along in the latter part of June in this section of the country in some years ?

A. No, sir ; at least I have never cut any in it in the latter part of June. I have commenced on the 1st of July, though, and I have finished on the 4th.

Cross-Q. 50. When you worked at Kissinger's, did you see a cider-mill there ?

A. Yes, sir.

Cross-Q. 51. Describe where it was.

A. I would say it was north—inclining north-west—from the house.

Cross-Q. 52. Near the path that led from the house to the spring through the field ?

A. A little west of the path.

Cross-Q. 53. Pretty well down towards the bottom of the hill ?

A. Yes, sir ; close to the ravine.

Re-direct by Mr. Howson :

Q. Q. 54. I will ask you one question which I forgot to ask you on the examination-in-chief. You have stated that you have known Mr. George W. Kissinger since 1870. Where was it that you became acquainted with him?

A. At the Harrisburg car-shops.

Q. Q. 55. Were you and he both working there when you became acquainted with him?

A. Yes, sir.

Examination taken, reduced to
writing, and by the witness affirmed
and subscribed to before me, this
14th day of June, 1884.

JOHN J. WENRICH.

FRED. M. OTT,
Examiner.

Adjourned until Monday, June 16, 1884, at 10, A. M.

JUNE 16, 1884, 10, A. M.

Examination resumed.

Present, same counsel.

EMANUEL KELLER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Storrow:

I am the same Emanuel Keller who testified as a witness in this case for the defendants, (see defendants' sur-rebuttal record, page 619.)

Q. 1. What season of the year was it when Mr. Kissinger first had your auger?

[*Objected to as not admissible at this stage of the case, as not in rebuttal of any fact or evidence brought out anew by the respondents in their sur-rejoinder, and as merely re-opening the case made by the complainants in their rebutting evidence taken in the years 1882 and 1883, and attempting to add cumulative evidence thereto.*]

A. It was late in the fall.

Q. 2. What year was it in?

[*Same objection.*]

A. In 1877, the way I am convinced now.

[*The entire deposition above objected to for the reasons set forth in the objection to question 1.*]

Cross-examination by Mr. Hill, de bene esse :

Cross-Q. 3. Who has been to see you and convinced you that it was in 1877 ?

A. Well, I seen Wallace, and we were talking about it. He was one year on one of my farms and we were talking about this—about the time the ram was put in.

Cross-Q. 4. Who else has been to see you ?

A. No one else—me and him had been talking about it.

Cross-Q. 5. Has not Mr. Beers or Mr. Brooks been to see you recently about it ?

A. I talked once with him about it; I had seen Wallace before they had been there.

Cross-Q. 6. What is Wallace's name, and who is he ?

A. Reuben Wallace; he is 'Squire Foulke's son-in-law.

Cross-Q. 7. Were Mr. Brooks and Mr. Beers together when you saw them ?

A. Yes.

Cross-Q. 8. Was it at your farm that you saw Mr. Brooks and Mr. Beers ?

A. Yes.

Cross-Q. 9. How long ago ?

A. I think it was on last Friday a week.

Cross-Q. 10. Did they have any books and papers with them when they came to see you ?

A. They had some papers.

Cross-Q. 11. Did they read any of the papers to you, or tell you what was in them ?

A. Yes; they told me some things that were in the papers; they read some of it to me.

Cross-Q. 12. You have a son, Henry Keller, have you not ?

A. Yes.

Cross-Q. 13. Where was your son Henry when you lent that auger to Mr. Kissinger ?

A. Well, I can't tell that; I was under the impression that he was

up at the New Berlin school at the time I was down here, but I find that I must be mistaken about that.

Cross-Q. 14. Your recollection was, that he was at the New Berlin school when Kissinger borrowed the auger, was it not?

[Objected to because the witness has stated it merely as an impression, and was not asked about it in his former deposition.]

Objection objected to as intended to instruct the witness, and as an interference with the right of cross-examination.

Question further objected to as an attempt to put language into the mouth of the witness.]

A. No, it wasn't exactly my recollection; I was under the impression it was, but I find I was wrong. I was convinced since that I was wrong; it was in 1877 that the pipes were not bored yet; late in the fall of 1877 he got the auger to bore them pipes. The way I found it out was: Wallace was on my farm that year—yes, and I have an article to show that it was in 1877.

Cross-Q. 15. What makes you think that the pipes were not bored till late in 1877?

A. Why, he had always talked about renting it; and his father-in-law wanted him to rent it, and he found the water was so unhandy. He said he wouldn't like to carry the water up that hill, or have his woman to carry it up.

Cross-Q. 16. When did Wallace tell you that?

A. Well, it is not long ago that we talked about it—that we talked about it again—that he convinced me that I was wrong in the first place about the date of it.

Cross-Q. 17. You say it was not long ago; how long ago?

A. Well, I don't know; about three weeks.

Cross-Q. 18. Where did he tell you that?

A. Well, it was at his house where he lives now—he is on my place now—but it was not at the same place where he had been living in 1877. He only stayed one year at the place where he was living at that time. He thought the farm was too small for his family.

Cross-Q. 19. You say that Wallace was thinking about renting the Draper farm; when did you first know about that?

A. Well, that there—of course I didn't know it just at that time. He told me that Foulk offered it to him, and he would have had it but the water was so unhandy—on account of that—and then he thought,

too, that there wasn't enough land. He said, too, that there was a little field below the road that he thought was to it yet, that he didn't know about then—thought the farm was all above the road where the buildings is, or else he would have rented it, maybe.

Cross-Q. 20. You didn't know about that until Wallace told you about three weeks ago, did you?

A. I didn't know it until Wallace reminded me of it again—that we had talked about it.

Cross-Q. 21. When was your son Henry at school at New Berlin?

A. Well, it was in the year 1875.

Cross-Q. 22. How long was he at school there?

A. Well, the first letter we got was in 1874 yet; he was two sessions there; and the last letter we got from him, the last session he was there, was in May, 1875. We have got the letter we got from him yet; it shows when he was at school.

Cross-Q. 23. Have you got that letter here?

A. I have got the letter here—in 1875—yes; here is the letter if you want to see it [witness hands letter to respondents' counsel.] Then he wrote a letter since; that he didn't know whether it was before he was at school or after.

[Respondents' counsel objects to the statement about the last-mentioned letter as not being responsive and as secondary and incompetent.]

Respondents' counsel offers in evidence the letter inquired of in the question, and requests that it be copied upon the record at this point; the original to be marked "Exhibit Henry Keller Letter." The letter is as follows:

"Union Seminary
New Berlin
Union County, Penn. [Rubber stamp.]
May the 8, 1875.

Dear Parents

I take the Privilege this afternoon of dropping a few lines to let you no that I am in good health at present and hoping that this letter will find you in the same enjoyment of health.

I recd your letter on Wednesday evening and am glad to hear that you are well I recd a letter from Franklin last evening and he says he is in good health and has a good home. the weather is not very warm yet but still the people are beginning to plant corn the grain and grass looks well only it is back yet. This session is going to a close fast their only a little over four weeks yet and then I intend to come home and do not think that I will ever come back. I must say something about money again I do not like to plague you always for money but I cannot do

without it I got two of my teeth pulled last session with the Dentice and he examined my teeth and they are beginning to rot and I am getting them fild or in a few years they would rot out, and I think it will cost about twenty dollars, send me about twenty-five dollars as soon as you can. I must close write soon.

H. W. Keller."]

Cross-Q. 24. What makes you think that it was in the fall of the year that Kissinger borrowed the auger?

A. Why, it was always—I was always under the impression that it was in the fall of the year; and I am pretty sure that it was, but pretty late in the fall.

Cross-Q. 25. You wouldn't testify positively that it was in the fall of the year, would you?

A. Oh, I wouldn't exactly positively, but that is my impression. Of course, a person can be mistaken in things as long ago as that.

Cross-Q. 26. How long did Kissinger have the auger before he returned it?

A. I couldn't say exactly; I thought he had it about a year.

Cross-Q. 27. Who returned it to your place? Did Kissinger return it, or did you or somebody else go and get it?

A. I couldn't tell that right. He says he returned it himself, but I am not so sure.

Cross-Q. 28. How late in the fall do you think it was when he borrowed it?

A. Well, it might have been a little before the holidays—not long before New Year's, I think.

Cross-Q. 29. When did Kissinger tell you about returning the auger?

A. To-day, just before I came over.

Cross-Q. 30. Where did he tell you that?

A. Over here at the tavern—the Bolton House.

Cross-Q. 31. Did he tell you that he borrowed the auger in 1877?

A. We had been talikng about it, but we didn't talk about the date—not exactly. He said it must have been middling late in the fall, if he got it in the fall, and I said I am pretty sure that he did get it in the fall.

Cross-Q. 32. Did he say that he got it in the spring?

A. No; he couldn't have thought that, because they were boring some through the winter, it appears.

Cross-Q. 33. Who told you they were boring some through the winter?

A. Why, he told me himself.

Cross-Q. 34. Who was present when you had that conversation with Mr. Kissinger ?

A. I don't know whether anybody was that close that they heard it.

Cross-Q. 35. Who else was in the room at the time ?

A. There was no one else in that I knew ; there might have been one or so in yet that I didn't know.

Cross-Q. 36. Who else talked to you at the Bolton House about your testimony ?

A. I don't mind that anybody else talked about it.

Cross-Q. 37. You came down to Harrisburg this morning, did you ?

A. Yes ; I came down this morning.

Cross-Q. 38. Has the Bell Telephone Company had you down here before within the last two or three weeks ?

A. No ; never before.

Cross-Q. 39. When you were here last winter to give your testimony, you told Mr. Jacobs and Mr. Hill that your recollection was that Kissinger borrowed the auger while your son Henry was at school at New Berlin, did you not ?

A. No, I don't think I said it was my recollection, but that I was under the impression that it was at that time ; but since, I have found out that I was mistaken.

Cross-Q. 40. That was your honest impression at that time, wasn't it ?

A. Well, that was my impression at that time—that it must have been so ; but then I found out that it wasn't in in 1877 yet—that I must have been mistaken.

Cross-Q. 41. Has anybody read to you, within the last two or three weeks, any of the testimony taken in this case ?

A. I don't know particularly that any testimony has been read. I have been told about other ones that have been mistaken too.

Cross-Q. 42. Who told you about other ones that had been mistaken ?

A. This man—I don't know his name—him and Beers had been up.

Cross-Q. 43. Was his name Brooks ?

A. I guess that was his name ; I heard his name mentioned.

Cross-Q. 44. Who did he tell you had been mistaken ?

A. Well, he told me about Cowens—that he had been mistaken—and about the Heisleys.

Cross-Q. 45. Did he tell you about Jesse Wagner's testimony ?

A. Yes, he did.

Cross-Q. 46. Did he tell you about the railroad receipts or books, showing when the new iron pipes came?

A. Yes, he did.

Cross-Q. 47. Did he tell you when the ram was put in?

A. Yes.

Cross-Q. 48. He told you that it was put in in the fall of 1878, did he?

A. Yes, sir.

Cross-Q. 49. He told you that if the ram was put in in the fall of 1878 the wooden pipes couldn't have been bored as long ago as 1875, didn't he?

A. No; there was nothing said about 1875. No; he didn't say—he didn't mention.

Cross-Q. 50. Didn't he tell you that if the ram was put in in the fall of 1878 the wooden pipes could not have been bored so long ago as you at first thought they were?

A. No; I don't think he mentioned anything about that. Of course, I knew myself that they couldn't have been put in so long.

Cross-Q. 51. Did he mention anything about wooden pipes cracking if they were gotten out a long time before they were used?

A. No; I don't notice or mind anything that he said about that.

Recess until 2, P. M.

Cross-Q. 52. Was Mr. Beers up to see you yesterday?

A. Yes; he had been passing there, and then he stopped; but, of course, he didn't subpoena me until this morning.

Cross-Q. 53. How long did he stop at your place yesterday—Sunday?

A. Well, about five minutes.

Cross-Q. 54. Have you had any talk with 'Squire Foulk about this case?

A. Yes; I had been talking with him about it last week when I got the article.

Cross-Q. 55. That is the article mentioned in your 14th answer, is it?

A. Yes; he wrote the article, and he had it kept there until I got it—between me and Wallace when he rented the farm.

Cross-Q. 56. When Kissinger borrowed the auger from you, who took it down to his place?

A. Wasn't I asked that before? Kissinger says he took it down, and I was under the impression that I had; I couldn't say.

Cross-Q. 57. When did Kissinger tell you that he took it down?

A. Why, he told me to-day.

Cross-Q. 58. Wallace had nothing to do with that auger, had he?

A. No, sir; he had not.

Cross-Q. 59. What makes you think that you lent the auger to Kissinger while Wallace was living on your farm?

A. Why, because I know, as far as I can find out, that the ram or pipes wasn't put in before the year 1878.

Cross-Q. 60. Did you ever see them boring pipes at Kissinger's?

A. No; I never was there when they were boring at them.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 16th day of June, 1884.

E. KELLER.

PAUL CHARLTON,
Notary Public, Special Examiner.

LEONARD SWARTZ, being produced, sworn, and examined, saith:

Examined by Mr. Storrow:

I am the same Leonard Swartz who heretofore testified at Harrisburg as a witness for respondents, (see respondents' sur-rebuttal record, page 682,) and at Philadelphia as a witness for complainants, (see complainants' printed rejoinder record, p. 2298.)

Q. 1. It has appeared in evidence that at one time Mr. George W. Kissinger had a hydraulic ram on his farm at Marysville; while he lived on that farm did you ever hear anything from him, or have any talk with him, about any other way of getting water up to his house through pipes, and if so, what talk did you have with him about it, and what did you do about it?

[*Objected to as immaterial, irrelevant, calling for hearsay, incompetent, and inadmissible at this stage of the case, also as leading.*]

A. About a year after he moved back the second time I was down there and he mentioned to me that Mr. Draper had proposed to lay pipe from a spring some distance above the main spring that they used water from, and run it up the other side towards the house, just as far as he could. That was the conversation that passed between us at that time.

Q. 2. Did you go and look at that upper spring at that time, or not?

[*Same objection.*]

A. I had been to see it; I don't know whether I went just at that time or not; I had been there and was looking at it.

Q. 3. When you looked at it, or when you had this talk with Mr. Kissinger, as you have testified, did you make any examination as to how far up the hill towards the house the water would flow from that spring?

[*Same objection, and also objected to as calling for the witness' mere opinion on the subject, as to which the witness has not been shown to have any special knowledge or experience.*]

A. Not more than we were standing just below the spring looking across to the other side, and we thought it would be conveyed about half way up the hill towards the house.

Q. 4. Was anything said at that time about the amount of water which that spring would furnish?

[*Same objection as to question 1.*]

A. I am not very positive about that. He said something about digging out the spring, and thought it would furnish the water. I don't remember that so distinctly.

Q. 5. It has been stated that about a fortnight ago Mr. Draper and Mr. Church and Mr. Fenn saw you at your house near Easton, Md. I suppose you remember their being there?

A. Yes, sir.

Q. 6. Did Mr. George W. Kissinger come to see you shortly after that visit, or how soon after?

A. Yes, sir; he came the next day about noon.

Q. 7. While there, did Mr. Kissinger mention to you that Mr. Draper had shown him a letter of his which referred to some pipes?

[*Objected to as leading, and as calling for the hearsay statements, not only of another person, but of a person who is one of the complainants' witnesses. And respondents protest against this kind of stuff being put upon the record as evidence.*]

A. Yes, sir.

Q. 8. If any conversation took place between you and Mr. Kissinger as to what the pipes referred to in the letter were for, will you tell what it was?

[*Same objection and protest.*]

A. He told me that Mr. Draper showed him a letter and asked him whether that was not his letter; he said, "Yes, that is my letter, but the pipe referred to in the letter had nothing at all to do with the ram"—considerably excited—but said they were pipes that were spoken of to convey the water from that spring. I then answered and said, "Yes, I remember of you telling me that."

Q. 9. While Mr. Kissinger lived on his farm at Marysville the second time, from the spring of 1874 to the spring of 1880, did he have more than one wagon at any one time?

[*Objected to as inadmissible at this stage of the case, and as leading and immaterial.*]

A. Yes, sir; he had several.

Q. 10. Did he have a heavy market wagon, or not?

[*Same objection.*]

A. Yes, sir; he had a large market wagon with a top on it; he frequently used two horses in it

Q. 11. Did he have a light spring-wagon during the same time or during a part of the time?

[*Same objection.*]

A. Yes, sir; he had a very light little wagon that he generally used in driving around; it was very light.

Q. 12. Did it have a top to it, or not?

[*Same objection.*]

A. No, sir, it had no top; it was just an open spring-wagon.

Q. 13. Do you know where he got it and whom he got it from?

[*Same objection.*]

A. Yes, sir; he got it from Peter Kaffenberger.

[*Entire deposition above objected to, and each and every question and answer therein specially objected to, as inadmissible at this stage of the case.*]

Cross-examined by Mr. Hill, de bene esse:

Cross-Q. 14. You have stated in your examination-in-chief that you had some conversation with Mr. Kissinger about laying pipes from a spring above the main spring, and running the pipes up the other side towards the house; was Mr. Draper present at that conversation?

A. No, sir; not at that time.

Cross-Q. 15. Then, so far as you testified to any statements of Mr.

Draper about it at that time, you can only testify to what Mr. Kissinger said that Mr. Draper had said; is that the fact.

A. Yes, sir; he said that Mr. Draper had promised to do that for him, or spoke of doing it. I—he had promised or spoken of doing just what I said—of putting in those pipes.

Cross-Q. 16. Did he say that Mr. Draper had promised, or only that Mr. Draper had spoken of putting the pipe in? Give his exact language.

A. I am not prepared to give the wording precise at this time; that was the sum and substance of it; as to the exact words that was spoken I wouldn't say.

Cross-Q. 17. Tell us everything that Mr. Kissinger said about it at that time, so far as you have any memory left upon the subject.

A. I believe I have related it as near as I remember it—all that was spoken upon that subject.

Cross-Q. 18. You don't remember anything else, then, that Mr. Kissinger said at that time except what you have already testified to, do you?

A. I believe not, on that subject.

Cross-Q. 19. Mr. Kissinger didn't say when Mr. Draper had been speaking about running the water from the upper spring, did he?

A. From his conversation I gathered that he had spoke of it just shortly before I was down there. I believe Mr. Draper was down just shortly before I came down, and then they had this conversation; and he repeated it to me after I came down, as near as I remember.

Cross-Q. 20. Why didn't you tell me that when I asked you in the 17th and 18th questions to tell me all that you remembered about that conversation, and you replied in substance that you had already told me all that you remembered?

A. I didn't know that he wished to know this, or I might have answered it in that way.

Cross-Q. 21. I asked you in the 17th question to tell us *everything* Mr. Kissinger said at that time, so far as you had any memory left upon the subject; and in the 18th question I asked you if you remembered anything else that Mr. Kissinger said at that time except what you had already testified to. Now, I will ask you again, if there was anything else in that conversation that you have any memory of and have not testified to; and if so, what was it?

A. I don't now remember anything else, unless it would be brought out by some other question that I don't think of at present.

Cross-Q. 22. How do you know that Draper had been at the farm a

short time before you were there ; did you see him there, or did Kissinger tell you ?

A. I got it from Mr. Kissinger—the way he spoke to me about it at that time.

Cross-Q. 23. You don't remember Mr. Kissinger's language that he used to you at the time, do you ?

A. Not more than the way I gave it. I can't give his exact words, of course, verbatim.

Cross-Q. 24. You say you were up to look at that upper spring ; when were you up there ?

A. I couldn't give the exact time ; I was up there several times—different times—I don't know the exact date.

Cross-Q. 25. Were you up there to look at the spring before, or during, or after the conversation that you testified to in your first answer ?

A. Yes, sir ; I believe I was there before and after, as I was frequently over the ground during that time.

Cross-Q. 26. Were you up to see the spring at the time of that conversation ?

A. I don't think I was at that time, as I knew where it was and had seen it before.

Cross-Q. 27. What caused you to be frequently over the ground during that time ?

A. I used to cross there to go to the upper station at different times, and then there was a new road making that I was connected with ; and sometimes when I was over to see Mr. Kissinger we would walk over—and so forth. I also farmed some of the ground at one time during Mr. Kissinger's absence, while he was away.

Cross-Q. 28. In what year was that, that you farmed ?

A. I can't now give the date of it. It was sometime before 1874 when Mr. Kissinger moved back—sometime before that—shortly before that.

Cross-Q. 29. At what place on the Draper farm did you have that conversation with Mr. Kissinger about bringing the water down from the upper spring ?

A. As near as I can remember, it was about the barn—over close to the barn somewhere.

Cross-Q. 30. What kind of pipes did Mr. Kissinger say at that time that he was going to use to bring the water down from that upper spring ?

A. I don't think he said what kind of pipe he was going to use; I don't remember.

Cross-Q. 31. Did he show you any bored wooden pipes, or logs that were to be used to make such bored wooden pipes, at that time?

A. No, sir.

Cross-Q. 32. Did he say anything about terra-cotta pipes or old iron pipes at that time?

A. I don't remember that he said what kind of pipes at all, more than he said he was going to lay pipes over there. That is about as near as I remember the way he put it.

Cross-Q. 33. Did he say anything about a hydraulic ram at that time?

A. I don't remember that he did.

Cross-Q. 34. Can you swear that he didn't?

A. I wouldn't say; I don't know; I don't remember anything of it; I don't remember that he said anything about it.

Cross-Q. 35. You say that conversation was somewhere about the barn. Can't you locate the exact spot where it occurred?

A. No, sir.

Cross-Q. 36. Who was present besides you and Mr. Kissinger during that conversation?

A. I don't remember there was anybody present but him and I.

Cross-Q. 37. Did he show you where he had thought of having the pipe come down from the spring?

A. He was pointing with his finger about such a direction, and so forth; I can't give the exact words or whereabouts.

Cross-Q. 38. Did he say where he intended to have the pipe deliver the water, or point out the spot?

A. Yes, sir; right below the house, as far up as he could possibly get it to reach or to run.

Cross-Q. 39. Do you remember the circumstance of Mr. Kissinger and Mr. David Cowens going to Milltown together at one time?

[*Obj' cted to as new matter not referred to in the examination-in-chief.*]

A. Yes, sir; I remember of them going over.

Cross-Q. 40. In what year did they go over?

[*Same objection.*]

A. I am not very positive about the year.

Cross-Q. 41. Was it during one of the years 1875 and 1876, in which you farmed Mr. Cowens' farm?

[Objected to as above, and also because it is leading, the witness having originally been the defendants' witness, and being now made their witness by inquiries as to new matter concerning which they introduced testimony in their sur-rebuttal.]

A. As near as I can remember it was in 1876 some time.

Cross-Q. 42. It was during the time that you farmed Mr. Cowens' farm, was it?

[Same objection.]

A. If it was in 1876, it was, as I farmed for him in 1875 and 1876.

Cross-Q. 43. Don't you know that it was in the spring of 1876?

[Same objection.]

A. I can't say that I do; I have nothing to fix it specially.

Cross-Q. 44. Don't you know that it was while you were farming Mr. Cowens' farm?

[Same objection.]

A. If I did know for a certainty I would say so.

Cross-Q. 45. When Mr. Fenn, Mr. Church, and Mr. Draper were at your place recently, didn't you tell them that that visit of Mr. Cowens and Mr. Kissinger to Milltown was while you were farming Cowens' farm?

A. I frequently said I thought it was the last year.

Cross-Q. 46. You mean the last year that you farmed Cowens' farm?

A. Yes, sir.

Cross-Q. 47. Their visit to Milltown was in the spring of the year, was it not?

A. I don't know as I am sure about it—what time of year it was—as I gave it very little thought or attention at the time.

Cross-Q. 48. Whose horse did they have to go down there with?

A. Mr. Cowens'.

Cross-Q. 49. As you have been asked about conversations with Mr. Kissinger, I will ask if you have had any conversation with Mr. Kissinger lately about that visit of himself and Mr. Cowens to Milltown.

[Same objection.]

A. I don't remember that there was anything said concerning that for some time.

Cross-Q. 50. For how long a time?

A. I really don't know—it might be quite a while; I really don't

know when we last spoke of it ; there was hardly anything said about it, or little or nothing, that I remember, for quite a while.

Cross-Q. 51. You have talked with him about it since he testified in this case, haven't you ?

[*Same objection.*]

A. I believe we did, sometime since that time, talk something about it.

Cross-Q. 52. And when you and he talked about it he said that visit was in the spring of 1876, didn't he ?

[*Same objection.*]

A. I am not very positive that he did ; he may have said it, and he may not have. Mr. Cowens talked to me about it and so did Mr. Kissinger, and it was, for a while, quite a dispute between them about it.

Cross-Q. 53. Didn't you tell Mr. Fenn, Mr. Church, and Mr. Draper, when they were down there to see you recently, that Kissinger had told you that that visit was in the spring of 1876 ?

[*Same objection.*]

A. I don't remember now that I told them the time ; we spoke of it.

Cross-Q. 54. You remember speaking to Draper, Church, and Fenn about it ?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 55. Now, don't you remember, in that conversation, telling them that that visit was in the spring of 1876, and that you would come to Harrisburg and testify to that effect if they would telegraph for you ?

[*Same objection.*]

A. No, sir ; not that way.

Cross-Q. 56. As you remember conversing with them about it, will you please inform us what you told them and all you told them about it ?

[*Same objection.*]

A. As near as I can repeat the conversation—that I knew of them being over, and, after they came back, that they related something about what they had seen, and so forth—but it was such a faint recollection that I would not dare say anything positive about it.

Cross-Q. 57. That is all you told them about it, is it ?

[*Same objection.*]

A. That is about the sum and substance of it, as near as I can put it.

Cross-Q. 58. Didn't you tell them about the visit being made with

Cowen's horse, and about Kissinger getting frightened at the horse while on the way, and about Cowens or Kissinger getting seed potatoes while on that trip?

[*Same objection.*]

A. I said something of that before, but I don't remember repeating that that day. I remember repeating that at some time, but don't remember repeating that on that visit.

Cross-Q. 59. Your memory of conversations is not very good, is it?

[*Same objection.*]

A. According to what it is.

Cross-Q. 60. Did you see Mr. Kissinger here in Harrisburg to-day?

A. Yes, sir.

Cross-Q. 61. Where?

A. Over at the Bolton House.

Cross-Q. 62. What Marysville parties did you see at the Bolton House to-day?

[*Objected to as irrelevant, incompetent, and immaterial.*]

A. None from Marysville, except Mr. Beers, I believe; two from Rye township.

Cross-Q. 63. What two?

A. Mr. Foulk and Mr. Keller.

Cross-Q. 64. When did you arrive here in Harrisburg on this trip?

A. Last Saturday, at three o'clock.

[*Examiner notes, at request of complainants' counsel, that to-day is Monday.*]

Cross-Q. 65. How were you notified to come here?

A. By telegram.

Cross-Q. 66. Name all the persons that you have talked with about this case, since you came here.

A. Mr. Storrow, Mr. Brooks, and Mr. Kissinger, I believe, was the main ones that I had any conversation with about it.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
16th day of June, 1884.

FRED. M. OTT,
Examiner.

L. SWARTZ.

Recess until 7.30, P. M.

JAMES M. MILLER, *being produced and sworn, upon examination, saith:*

Examined by Mr. Howson:

I live in Harrisburg; am forty-nine years old; book-keeper for the Harrisburg *Telegraph*.

Q. 1. Have you with you the file of the Harrisburg *Daily Telegraph* for the year 1875?

A. Yes, sir. [Producing bound paper-file marked *Daily Telegraph*, 1875.]

Deposition taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
16th day of June, 1884.

PAUL CHARLTON,
Notary Public, Special Examiner.

JAMES M. MILLER.

[*Complainants' counsel requests the Examiner to copy the following articles from the issue of the Harrisburg Daily Telegraph for Monday, December 6, 1875.*

The Examiner copies them as follows:

"Yesterday was a damp and decidedly rainy day.

Umbrellas and overshoes were in demand." (Last page.) And also;

"Weather Report, Washington, Dec. 6. *Synopsis for the past twenty-four hours.*

The barometer has risen in the western States and extreme north-west. It has fallen in the middle States and Lake Regions, and is low in Missouri, Wisconsin, Pennsylvania, and New Jersey.

The temperature has fallen decidedly from Minnesota and Dakota to Texas, and risen slightly in the middle and eastern States.

North-east winds, fog and rain prevailed from the middle States to the Mississippi." (First page.)

[*The above newspaper extracts objected to as immaterial, not in rebuttal, and incompetent at this stage of the case.*]

PETER WILSON, *being produced and sworn, upon examination saith:*

I live in Harrisburg; am twenty-five years old; messenger in the office of the Harrisburg *Daily Patriot*.

Examined by Mr. Howson:

Q. 1. Have you with you the file of that paper for the period from November 22, 1875, to July 31, 1876?

[*Objected to, if by this form of question it is sought to establish the fact*

that this person produced is the custodian of this book; the said person not having been shown to be the custodian of this book or file of papers.]

A. Yes, sir.

Cross-examined by Mr. Melville Church, de bene esse:

Cross-Q. 2. Who has charge of this book in the *Patriot* office?

A. Why, Mr. Herbert. I don't know his first name.

Deposition taken, reduced to writing, and by the witness sworn to and subscribed before me, this 16th day of June, 1884.

PAUL CHARLTON,
Notary Public, Special Examiner.

PETER WILSON.

GEORGE D. HERBERT, *being produced and sworn, upon examination saith:*

I live in Harrisburg; am thirty-five years old; managing editor of the *Harrisburg Daily Patriot*.

Examined by Mr. Howson:

Q. 1. Have you here the file of the *Harrisburg Daily Patriot* for the period from November 22, 1875, to July 31, 1876?

[Objected to; it not having been shown that the witness is the custodian of the file of papers produced.]

A. This volume is the correct file of the *Patriot* from November 22, 1875, to July 31, 1876.

Cross-examination declined.

Deposition taken, reduced to writing, and by the witness sworn to and subscribed before me, this 16th day of June, 1884.

PAUL CHARLTON,
Notary Public, Special Examiner.

GEO. D. HERBERT.

[Counsel for complainants requests the Examiner to copy upon the record the following item from the issue of the Harrisburg Daily Patriot for Monday, December 6, 1875.

The Examiner copies it as follows:

"The disagreeable, cold, incessant rain of yesterday kept many people indoors." (Last page.)

Objected to as not properly proven, and, further, as immaterial, not in rebuttal, and incompetent at this stage of the case.]

JUNE 18, 1884, 10, A. M.

Present, Mr. Howson for complainants; Mr. Church for respondents.

[Complainants offer in evidence two photographic pictures of the Draper or Kissinger farm, referred to in the evidence herein, and the same are marked respectively: "Complainants' Exhibits Kissinger Place No. 1 and No. 2" by the Examiner.]

Admission of photographs objected to as immaterial, and not admissible at this stage of the case. The objection to apply to all evidence relating to the photographs.]

JAMES K. COTTEREL, being produced and sworn, upon examination, saith:

Examined by Mr. Howson:

I live at No. 417 Boas street, Harrisburg; am twenty-five years old; photographer.

Q. 1. Are you the gentleman who yesterday took the two photographs just offered in evidence?

A. Yes, sir; I took the photographs.

Q. 2. Did you or not take these pictures from points on the road which leads from Marysville past the farm of which they are photographs?

A. Yes, sir.

Q. 3. Upon or in what was your camera placed while you were taking these pictures?

A. A two-horse wagon—stone-wagon—upon the bed of that wagon.

Q. 4. Was or was not Mr. Brooks, the gentleman now in the room, with you at the time when you took these pictures?

A. Yes, sir.

Q. 5. At what height above the floor of the wagon was the eye of the camera at the time when these pictures were taken?

A. About the height of Mr. Brooks' eyes—about his eyes.

[Objected to as mere opinion, supposition, not evidence.]

Q. 6. Did you or not so adjust the camera that its eye was on a level, or thereabouts, with the eyes of Mr. Brooks when standing on the floor of the wagon from which the pictures were taken?

[Objected to as leading, and as calling for mere supposition or opinion, not evidence.]

A. I did.

Q. 7. About what is your own height?

A. My height is about five feet two and a half or three inches—about that; I'm not positive.

[Answer objected to as not evidence, as mere guess-work.]

Q. 8. In yourself looking through the camera for the purpose of obtaining what you considered a proper adjustment for the view you wished to take, on what did you stand?

A. Stood on the body of the wagon—on my tip-toes.

Q. 9. You have stated that these two pictures were taken from points in the road leading past the premises represented; which of the two pictures was taken from a point nearest the front gate of the premises?

A. This one. [Witness indicates "Exhibit Kissinger Place, No. 1."]

Q. 10. Was that or not the first one that was taken?

A. This one was the first one that was taken. [Indicating "Exhibit Kissinger Place, No. 1."]

Q. 11. In moving the wagon and camera from the point where Exhibit No. 1 was taken to that where Exhibit No. 2 was taken, did you or not ride in the wagon; and if yes, what was your position in the wagon during that time?

A. Yes, sir; I rode in the wagon, and I was in a stooping posture, something like this [indicating] holding my camera-box.

Q. 12. I call your attention to that part of Exhibit No. 1 which lies to the right of the barn represented, and is bounded on the right by a fence. Did you or not, while riding from one point to the other in the position described in your last answer, take occasion to notice whether or not that part of the premises could be seen from the wagon in which you were riding, as you went along?

[Objected to as indefinite.]

A. Now, in the first place, what do you call the right of the barn?—Facing the barn, or facing the road?

Q. 13. My question has reference to that part of the picture which represents a portion of the premises bounded to your left, as you face the picture, by the barn; on your right, as you face the picture, by a rail-fence, and on the rear by another rail-fence, appearing to extend from the neighborhood of the barn to the rail-fence first mentioned.

A. It was, when I started away. Of course, I wasn't looking at it all the way. As I drew up to the place where I last took a picture, I could see what is represented in the second picture.

Q. 14. You have stated that Mr. Brooks was with you when these pictures were taken; were or were not other persons there, too? If yes, how many, and give their names, if you know them?

A. Mr. Brooks was there; there were three gentlemen there, and one boy. Well, I never met the gentlemen before; I was introduced

to the old gentleman; his name was Mr. Cowens; I could identify them; the boy I could not.

[Entire deposition objected to as not competent at this stage of the case.]

Cross examined by Mr. Church, de bene esse:

Cross-Q. 15. What was the height from the ground to that portion of the stone-wagon upon which the tripod which supported your instrument rested?

A. I don't know—suppose about as high as this table, [indicating table in the room at which the Examiner is writing.]

[Answer objected to as not evidence and mere guess-work.]

Cross-Q. 16. Whereabouts in the road was the stone-wagon located when at the point from which picture No. 1 was taken?

[Objected to as vague and indefinite.]

A. It was on the right of the road, facing the house, close to the fence.

Cross-Q. 17. What house have you reference to?

A. The house—from the gate-way where you go into the premises.

Cross-Q. 18. Do you mean the large stone-house, with the cupola on top?

A. Yes, sir.

Cross-Q. 19. The instrument was at the extreme right of the wagon, was it not, in order that you might get behind it for the purpose of making your observation?

A. No, sir; it was in the center—that is, the first one. [Indicating No. 1.]

Cross-Q. 20. Was the wagon parallel to the road or across it—the length of the wagon?

A. It was parallel to the road.

Cross-Q. 21. At the point where that picture was taken was there not a rise of ground near the road and between the point represented at the bottom of this picture, No. 1, and the point where your instrument was located?

A. There was a field sloped toward the barn, forming a valley—a sort of a valley.

Cross-Q. 22. Question repeated.

[Objected to as so vague and indefinite as to be unintelligible.]

A. From the fence the field sloped down toward the barn, forming a

sort of a valley. The field is a little higher than the road—about a foot and a half or two feet, as near as I can recollect.

Cross-Q. 23. I notice that in the picture No. 1 the trunk of the large tree to the right of the barn, and near which a person appears to be sitting on the fence, is not observable, while in picture No. 2 it is plainly visible; if the field over which your instrument was pointed in taking picture No. 1 sloped right down from the fence to the bottom of the gully, how is it that in picture No. 1 the trunk of that tree is not plainly visible?

[Objected to as misstating the facts.]

A. The sun shining right on the whole surface of the landscape and on the tree, which, being nearer to the camera, throws a dense shadow on the trunk, so that it cannot be seen.

Cross-Q. 24. I also notice that in picture No. 1 there is visible the top of a small tree just at the left of the large tree before mentioned, near the bottom; if the slope from the fence down to the bottom of the gully is unmarked by any rise of ground, how is it that the trunk and lower portion of that tree is not visible in that picture?

[Objected to as not cross-examination and as immaterial.]

A. I suppose the gully is deeper there, and the camera wouldn't photograph it—would photograph just what it seen.

Cross-Q. 25. Then, as I understand you, there is a rise of ground between the fence and the small tree referred to in my last question which obscures from view the lower portion of that tree; is that not the fact?

[Same objections.]

A. The field slopes down to the barn, as I said before, forming a sort of valley, and the field is a foot and a half or two feet higher than the road, according to my recollection—that is, at the fence.

Cross-Q. 26. I cannot distinguish in either of the views produced here, and especially in view No. 1, what that light-looking object is beneath the large tree before referred to; can you tell me what it is?

[Same objections and as trifling.]

A. It is not noticeable in No. 2, being as it's so far away; but I suppose it's a cart under the tree which I could not see with my naked eye from the camera; but the lens photographed it and I seen it when I came home—the circle that looked like the wheel—I could see something under the tree, but could not tell what it was, whether a cart or a wagon.

Cross-Q. 27. What was the size of the magnifier or lens which you used in taking these pictures?

A. The diameter of the lens was about an inch and a half, or three quarters; the tube is about four inches long.

Cross-Q. 28. Did you, or any one else while you were there, measure the distance from the large tree, to which I have before referred, to the points from which these two views were taken, or either of them?

[*Same objection as to cross-question 26.*]

A. I did not measure any distance, nor did I see anybody else measure the distance from the tree spoken of to any point of my camera.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
18th day of June, 1884.

PAUL CHARLTON,
Notary Public, Special Examiner.

JAMES K. COTTEREL.

GEORGE W. KISSINGER, *being produced, sworn, and examined, saith:*

Examined by Mr. Storrow:

I am the same George W. Kissinger who testified for the complainants at Baltimore, in August, 1882. [See complainants' printed proofs, page 551.]

Q. 1. Please look at the "Exhibit Kissinger-Draper letter," which is as follows:

"May 30 75
Marysville

Mr Draper Dear Sir i receved your letter a bout the pipse now they say non will do but iron pipe to go up hil now i can get som god ole pipe here now i want you to com up soon we got the pech tres al trimd and lok nice wat sho you som farmin this year rite sone no more yours truly
Geo. Kissinger."

State whether that letter was written by you.

A. Yes, sir; that is one of my letters.

Q. 2. That letter refers to some pipes; what were they for?

A. That pipe was intended to run the water from the upper spring.

Q. 3. Where was it intended to run that water to with those pipe?

A. Up the other hill as far as it would run.

Q. 4. What do you mean by "the other hill"—what hill?

A. The hill from the hollow up the hill towards the house.

Q. 5. While you lived on the Marysville farm, did you ever have any talk with Mr. Draper about running water in pipes from that upper spring to the house, or as near to the house as the spring would carry it?

A. Yes, sir.

Q. 6. Do you remember the particular visit of his to Marysville when you and he talked about it?

A. Yes, sir.

Q. 7. When was that?

A. That was in 1875.

Q. 8. What part of the year 1875?

A. Early in the spring.

Q. 9. This letter of May 30, 1875, says: "I can get some good old pipe here;" do you remember what old pipe you thought you could get there at Marysville when you wrote that letter?

A. It was a great deal of old pipe that came out of the engine-flues—flue-pipe—that I thought I could get.

Q. 10. Did you ever get any of it?

A. No, sir.

Q. 11. Did Mr. Draper ever direct you to get any of it?

A. No, sir.

Q. 12. You have said that it was talked of to carry water in pipes from the upper spring up the hill towards the house; do you remember whether you ever had any talk with Mr. Leonard Swartz about that?

[Objected to as calling for hearsay and as leading.]

A. We had.

Q. 13. Do you remember when it was?

[Same objection.]

A. It was in the spring of 1875.

Q. 14. Do you remember whether Mr. Draper was up on the farm in the spring of 1875?

A. Yes, sir; he was.

Q. 15. Mr. Draper has testified that at the visit he made you in the spring of 1875, he saw on the farm some saplings which you had cut to bore for pipe; had you at that time cut any logs of any kind to bore for pipe?

[Objected to as leading.]

A. No, sir.

Q. 16. Mr. Draper testified that at that time he saw some saplings which you had cut to bore for pipe; that he said that they were too small, and that you might use them for fence, but must not use them for pipe; did anything of that kind ever take place between you and Mr. Draper?

[*Same objection.*]

A. No, sir.

Q. 17. While you lived on that farm between the spring of 1874 and the spring of 1880, did you ever cut for pipe a lot of logs which were so small that you couldn't use them, and had to cut others in place of them?

[*Same objection.*]

A. No, sir.

Q. 18. Mr. Draper testified that about two weeks ago he went to Easton with Mr. Church and Mr. Fenn, and saw you there; did you see these gentlemen there about two weeks ago?

A. Yes, sir.

Q. 19. Did they show you a number of letters and ask you whether they were letters which you had written to Mr. Draper?

A. Yes, sir.

Q. 20. Was this letter of May 30, 1875, among them?

A. Yes, sir.

Q. 21. Did you tell these gentlemen, or any of them, at that visit, in substance, that the pipes referred to in this letter were for the ram?

A. No, sir.

Q. 22. Did you tell them at that visit what the pipes referred to in that letter were for?

A. For the water to run from the hill down.

Q. 23. When you testified at Baltimore, in August, 1882, you testified that Mr. Drawbaugh and Mr. Jacobs had been to see you twice before you testified; do you remember that they had been to see you twice before you testified?

A. Yes, sir.

Q. 24. Since you testified at Baltimore, in August, 1882, have Mr. Jacobs, or Mr. Drawbaugh, or Mr. W. K. Fenn been to see you at your house near Easton?

A. Yes, sir.

Q. 25. How soon after you testified at Baltimore did any of them

come to see you; which of them came on the first visit, and did they take you away with them anywhere?

A. Mr. Jacobs and Mr. Drawbaugh; if my recollection is right, it might be the summer after, or it might have been the same summer; they took me to Dover.

Q. 26. Whom did they take you to see at Dover?

A. Mr. Draper.

Q. 27. When you saw Mr. Draper at Dover then, was there any talk about the ram?

A. Yes, sir.

Q. 28. Have Mr. Drawbaugh, or Mr. Jacobs, or Mr. Fenn been to see you at Easton since the time when they took you to Dover?

A. Yes, sir.

Q. 29. Once, or several times?

A. Several times.

Q. 30. Did you have the ram-pit stoned up at or about the time the ram was put in?

[*Objected to as leading.*]

A. Yes, sir.

Q. 31. Who stoned it up?

[*Same objection.*]

A. Mr. Jesse Wagner.

Q. 32. Had the ram been in any considerable length of time when Mr. Wagner stoned up the pit, or not?

A. No length of time.

Q. 33. It appeared in your former deposition that a lot of pipe came by rail from Philadelphia in summer or fall of 1878 and was used for the ram; will you state whether or not the ram had ever been in with any other set of pipe before that pipe came by railroad?

A. No, sir.

Q. 34. Do you remember who paid the freight on that pipe?

A. Yes, sir.

Q. 35. Who was it?

A. James Zimmerman.

Q. 36. It has appeared that James Zimmerman hauled that pipe from the railroad to your place; did he pay the freight at the time he hauled it or at some other time?

A. My recollection is he paid for it when he got it or hauled it, or else he would not have got it, I don't suppose.

[Answer objected to by Mr. Hill as hearsay and mere opinion or supposition.]

Q. 37. Did you pay the freight to the freight-agent yourself, personally?

A. I have no recollection of it.

Q. 38. In your former deposition you testified that you cut the logs and bored the pipe for the ram between the latter part of 1877 and the summer of 1878; how does that agree with your present recollection?

A. That comes pretty near.

Q. 39. Do you remember whether Mr. Herman J. Eppler saw any of those logs on your place after they had been cut, and had any talk with you about them?

A. Yes, sir; he saw some.

Q. 40. What was the talk he had with you about them?

A. Why, he wanted to know what they were for.

Q. 41. What business of his was it what they were for? Why had he any call to ask about them?

[Objected to as calling for the mere opinion of the witness.]

A. Well, he was agent, and I suppose he thought I was cutting them to sell.

Q. 42. In your former deposition you said that you went over to Drawbaugh's and fetched the ram. Your son Cyrus testified that he went to Drawbaugh's and fetched it. Which of you two is right?

[Objected to as substantially leading, and evincing a clear purpose to have the witness deny his own statements, made under oath, in this case, in order to reconcile his testimony with that of his son.]

A. I was wrong. Cyrus brought the ram. I brought something else. I confess I made a mistake there.

Q. 43. If you brought anything else to be used with the ram, or in connection with it, state what it was.

[Same objection.]

A. It was his tools.

Q. 44. Whose tools?

[Same objection.]

A. Mr. Drawbaugh's.

Q. 45. What were those tools to be used for, and what were they used for?

[*Same objection.*]

A. They were tongs to screw up and some connections.

Q. 46. In your former deposition you said that you went up to Keller's and fetched the auger. Your son Cyrus testified that he went to Keller's and fetched it. Which of you two is right?

[*Objection repeated.*]

A. I am right.

Q. 47. Where did you find it at Keller's?

A. I found it up above the wagon shed.

Q. 48. What do you mean by "up above the wagon shed?"

A. There were joists across, and it stuck right up across that.

Adjourned until June 17, 1884, at 10, A. M.

JUNE 17, 1884, 10, A. M.

Examination resumed.

Present, same counsel.

Examination of George W. Kissinger by Mr. Storrow, continued:

Q. 49. In your answers 39, 40, and 41 you mention Herman Eppler's seeing on your place some logs which you had cut for piping, and talking to you about them; do you remember whether anybody was with him on that occasion; and if so, who?

A. Simon was along with him—his brother.

Q. 50. In your former deposition you testified, in substance, that you and Mr. Draper went over to Mr. Drawbaugh's to order the ram, in 1877, the year before it was put in; is that your present recollection, or not?

A. Yes, sir.

Q. 51. Do you remember whether you and Mr. Draper stopped anywhere to see anybody on your way over to Drawbaugh's, or on your way back?

A. Not more than we stopped at Herman Eppler's shop.

Q. 52. What wagon did you and Mr. Draper go over to Mr. Drawbaugh's in that day?

A. A light spring-wagon.

Q. 53. Did you own any other spring-wagon while you lived at Marysville?

A. Yes, sir.

Q. 54. What kind of a wagon was the other?

A. I called it a two-horse market-wagon.

Q. 55. Was it a light wagon or a heavy wagon?

A. A pretty heavy wagon.

Q. 56. Did you ever drive it with one horse?

A. Yes, sir.

Q. 57. Was it covered, or open?

A. A covered wagon.

Q. 58. Was the light spring-wagon you have spoken of covered, or open?

A. Open.

Q. 59. Did you own any spring-wagon except these two while you lived at Marysville?

A. No, sir.

Q. 60. Which of those wagons were you in the habit of driving with when you had no load to haul?

[*Objected to as leading and calling for mere guess-work, and incompetent.*]

A. The light one.

Q. 61. Where did you get that light spring-wagon—whom from?

A. From Kaffenberger—or rather his boy. I think Kaffenberger's first name was Peter, if I ain't mistaken.

Q. 62. Did you make any alterations in it or additions to it soon after you bought it?

A. Yes, I put it in repair so that it would run.

Q. 63. Was the box of it painted when you got it?

A. There was some paint on it.

Q. 64. Did you put some new work to the box, or not?

A. Some little work.

Q. 65. Did you paint it after you got it, and if so what kind of paint did you paint it with?

A. I put some paint on—I suppose you call it paint—some red mineral paint, with coal oil mixed.

Q. 66. Did you have it done at a paint-shop, or do it yourself?

A. I done it myself.

Q. 67. Was it varnished over the paint, or not?

A. No, sir.

Q. 68. Was it a nicely-finished wagon-box or a rough piece of work?

A. Well, it was pretty roughly done.

Q. 69. What color was the wagon-box after the paint was on and dried?

A. A kind of a brown color, as near as I can get at it; it was mineral paint; the color was a little dark.

Q. 70. Do you remember about when it was that you got that light spring-wagon?

A. I think it was in the fall of the year 1876; I hardly can get at it any nearer.

Q. 71. Did you put a strainer at the end of the pipe for the ram that was in the spring, where the water ran into the end of the wooden pipe?

A. Yes, sir.

Q. 72. Did you ever have more than one strainer to put there?

A. No, sir.

Q. 73. How near the time when you put the ram in did you get that strainer?

A. I got it, I think, the very day the ram was in. It wasn't a day later or a day before; I think it was on the day we finished.

Q. 74. Where did you get it made?

A. Mrs. Stotter, at Marysville.

Q. 75. Did she carry on a tin-shop there?

A. She carried on a shop.

Q. 76. What was the shape of this strainer?

A. Well, it was made to go into the log, and was larger outside, and full of holes.

Q. 77. Shaped like a funnel?

A. Yes; it was round.

Q. 78. Something has been said about the small pipe of the ram bursting; how soon after you put it in did it burst?

A. Well, there was a little burst, if I am right, the first night after it was laid and started.

Q. 79. What made it burst that night?

A. Well, we let the water in and it froze.

Q. 80. Did you get that burst mended; and if so, where did you get it mended?

A. I got it mended at Mrs. Stotter's.

Q. 81. How soon after it burst did you get that burst mended?

A. If I am right I got it mended the next day, or took it down next day.

Q. 82. Did it ever burst after that: and if so, how soon after?

A. There was two other pieces bursted after that; I suppose it was three—maybe four weeks afterwards.

Q. 83. What made this second burst?

A. I left it open too long and it froze.

Q. 84. Was this second burst a little burst, or a big one?

A. Why, both were bursted pretty bad.

Q. 85. Did the pipes of that ram ever burst except from freezing?

[*Objected to as leading.*]

A. Not as I know of.

Q. 86. Mr. Draper has testified that he was on the farm in April, 1875, and went out with you into the peach orchard to see about trimming peach trees, and showed you how he wanted them trimmed; do you remember about that?

A. Yes, sir.

Q. 87. Mr. Draper testified in substance that before that visit something had passed between you and him about trimming peach trees; is that the fact, or not?

A. I had wrote him something about trimming the peach trees.

Q. 88. Do you remember whether this visit, when you and he went out into the peach-orchard and he did a little trimming to show you how, was the first visit after you wrote to him about trimming trees or the second visit?

A. The first visit, if I can recollect.

[*Complainants' counsel states that he wishes to use a letter written by Mr. Kissinger to Mr. Draper, and which he believes was exhibited by Mr. Draper during his testimony at Dover, though not put into the case; he therefore wrote to Mr. Draper day before yesterday requesting him to send the letter by mail to the Examiner. He asks the Examiner, if he has received any paper since then from Mr. Draper, to produce it.*

Examiner produces letter.]

Q. 89. Please look at the letter now produced by the Examiner and state whether you wrote it.

A. Yes, sir; it is my handwriting.

Q. 90. Is that one of the letters which Mr. Draper showed you at Easton about a fortnight ago?

A. No, sir.

[Letter put in evidence marked "Exhibit Kissinger-Draper Letter, Feb. 13, 1874." It is as follows :

"Eberlys mills, Feb. 13, '74

Dere Sir, Mr. Draper i have riten a Greement as nere as I think rite and if not we will make it reight and if you Do what reight i will and if you sine it send it to Mr. Kipple and i want you to come up when i got moved and stay a week or tow help trim them peach tree they are a Bed condition,

Yours truly,

Geo. W. Kissinger."

At suggestion of defendants' counsel, complainants' counsel requests the Examiner to copy into the record the letter received this morning from Mr. Draper, inclosing the foregoing, for whatever it may be worth.

The Examiner copies said letter as follows :

"Dover, Dela, June 16th, 1884,

Mr. F. M. Ott,

Dear Sir, At the request of Mr. Storrow I send you the letter of Mr. Geo. W. Kissinger to me before he moved on my farm, dated Eberlys Mills, Feb 3, 74. I think we showed this letter to Mr. Kissinger at Easton and that he acknowledged it with the others. Mr. Kissinger had been over to look at the farm and saw that the Peach trees were in bad condition, and because I did not go up in 1874 until it was too late to trim the trees he let them alone until I went up in April, 1875, when I instructed him how to trim and cultivate them.

Ever truly,

Thomas Draper."]

Q. 91. Please look at the book put in evidence by Mr. Draper marked "Exhibit Draper Diary," and state whether you remember ever having seen it before.

A. Yes, I have seen this account—these old ones.

Q. 92. Mr. Draper testified that he had a part of this account, and wrote a part of it when making a settlement with you in the fall of 1878; do you remember whether he had this account-book at that time?

A. Yes, sir.

Q. 93. There is an entry in this account-book "Expenses of ram 60;" do you remember whether he made that entry at Marysville in the fall of 1878, or whether it had been made before?

A. If I am right, it was made in the fall of 1878.

Q. 94. When you and he settled at that time, do you remember how much was found due from you to him for balance of the last year's rent?

A. Yes, sir; or very near it.

Q. 95. About how much?

A. Fifty some dollars.

Q. 96. In this book the sixty dollars for the ram does not now appear deducted from the balance of that last year's rent, but was written into the previous year; do you remember why that was done?

A. I suppose, because he couldn't take sixty dollars off of fifty odd dollars, and it was set back on that account.

[Answer objected to by Mr. Hill as mere supposition and not fact, and as entirely too thin for evidence.]

Q. 97. Mr. Draper has testified that when you and he made a settlement at Marysville in the fall of 1878, you and he did not agree about his charging interest, and that you and he left out that question to Herman Eppler and Mr. Al. Seidel, and that they looked over the papers and account-book, and settled it that you were not to pay him interest; did anything of that kind take place; and if so, what do you remember about it?

A. Yes, sir; well, I don't remember how they settled, but there was no interest. I walked out, I think, while they looked over it, and there was no interest, I don't think, charged.

Q. 98. Do you know anything of their looking over any books or papers?

[Objected to, as the witness has just stated that he walked out while they looked over it.]

A. They had been, I suppose, looking over it.

Cross-examined by Mr. Hill:

Cross-Q. 99. When did you arrive here in Harrisburg on this trip?

A. Friday noon.

[Examiner notes that it is now Tuesday.]

Cross-Q. 100. Where have you been staying since you came here?

A. At the Bolton House.

Cross-Q. 101. How were you notified to come to Harrisburg?

A. By a telegraphic message.

Cross-Q. 102. Whom have you talked with about this case since you came to Harrisburg?

A. I have talked very little to any person about it.

Cross-Q. 103. Name all the persons to whom you have talked about it since you came here.

A. I talked a little to Swartz, talked a little to Mr. Storrow, and I don't know whether I talked to anybody else about it.

Cross-Q. 104. Please exercise your memory a little upon the subject, as it has all taken place within the last four days, and see if you can remember anybody else besides Mr. Storrow and Mr. Swartz to whom you have talked about the case since you arrived here.

A. I talked a little to Kaffenberger about the wagon; the rest of the time I was reading and attending to my affairs, and I was running about the town a little; I can think of nothing outside of that.

Cross-Q. 105. What affairs had you here in town to attend to besides this case for the last four days?

A. Why, I have got some money standing out here in this town that I was attending to, as I would see the parties.

Cross-Q. 106. You have now mentioned Mr. Swartz, Mr. Storrow, and Mr. Kaffenberger as parties to whom you have talked about the case during the last four days; if you remember any other persons to whom you have talked about the case during that time please give their names—all of them.

A. Well, there wasn't much said outside of the party, that I know; I might have passed words, but no conversation.

Cross-Q. 107. Mention all the persons with whom you have passed words about the case since you came here.

A. I might have passed some words with Mr. Smith, but not particularly, and with other men; when I would be in the room with them occasionally I might have passed words, as anybody would, but no conversation.

Cross-Q. 108. You say that you might have passed some words with complainants' counsel (Mr. Smith) about the case; don't you remember whether you did pass any words with him or not?

A. We have spoke a few words back and forth with counsel (Mr. Storrow); I had nothing to do with the rest—the rest didn't bother me.

Cross-Q. 109. You have had no conversation, then, since you came here, with Mr. Brooks or Mr. Howson about the case; have you?

A. Not particular with any other ones about the case.

Cross-Q. 110. Did you see 'Squire Foulk when he was down here the other day at the Bolton House?

A. Yes, sir; I took dinner with him.

Cross-Q. 111. Did you and he say anything to each other about the case?

A. I don't think we did; we spoke about old times, the little time I spoke with him.

Cross-Q. 112. Did you see Emanuel Keller when he was down here the other day at the Bolton House?

A. Yes, sir; took dinner with him.

Cross-Q. 113. You talked with him about the case, did you not?

A. I might have said one or two words to him about the case; I was very little with him—didn't get time enough for the old friendship talk.

Cross-Q. 114. Don't you remember whether you did say anything to him about the case?

A. I can't just recollect what I said; it was only a word or two that I said to him; if I ain't mistaken, it was about the auger. I believe I asked him whether he found the auger when it came back; I believe that is all I asked him.

Cross-Q. 115. You did talk with him about the auger, then, did you?

A. That was all.

Cross-Q. 116. Are you sure that was all?

A. As near as I can recollect, because we had no time to talk; at dinner-time we didn't talk about nothing.

Cross-Q. 117. Are you sure that you didn't talk to him about the ram?

A. No, sir; I am sure that I didn't talk nothing to him about the ram.

Cross-Q. 118. Didn't you tell him that the ram was put in in 1878?

A. Not to my recollection.

Cross-Q. 119. Will you swear that you didn't?

A. I will swear, to the best of my knowledge, that I said nothing to him about the ram that I know of.

Cross-Q. 120. Didn't you talk to him about the pipes, or the boring of the pipes, for the ram?

A. Not when I mentioned the auger. I asked him whether he found the auger. When I was done with the auger I took it home and put it above the joists. I asked him whether he had found it. Now, whether you make anything about boring out of that—

Cross-Q. 121. Is that all you said to Mr. Keller about the pipes, or about boring the pipes, since you have been here?

A. That is all I can recollect.

Cross-Q. 122. If you said anything to him about the ram since you have been here, you have already forgotten the fact, have you not?

A. We had no time to talk. Why did I talk with him about the ram? The ram didn't concern me.

[*Question repeated.*]

A. No, I don't think I have forgotten anything unless it has slipped away out of my sight. It might have been mentioned by Mr. Storrow when I was present, but I didn't say anything about the ram that I can recollect of, because I didn't come here to testify about the ram.

Cross-Q. 123. If you did say anything to Mr. Keller about the ram since you came here you have already forgotten the fact, have you?

A. I must have forgotten it, or I didn't say it—one of the two.

Recess until 2, P. M.

[*Complainants' counsel states that he intended to ask a few questions upon another subject, but they escaped his mind, and he will now put them.*]

Q. 124. Mr. David Cowens testified that he and you went to Milltown together in 1876; do you remember whether you and he went to Milltown together in that year?

A. Yes, sir.

Q. 125. What did you go for?

A. For seed potatoes.

Q. 126. What place in Milltown did you go to?

A. Ezra Gilbert's.

Q. 127. Mr. Cowens thinks that you and he went to Drawbaugh's shop on that visit; what is your recollection about that?

A. I have no recollection of it.

Cross-examination by Mr. Hill continued:

Cross-Q. 128. When you were talking with Mr. Emanuel Keller here in Harrisburg, since you came here on this trip, did you tell Mr. Keller anything about getting the auger late in the fall?

A. I think not.

Cross-Q. 129. You don't remember having any talk with him about its being late in the fall, do you?

A. No, sir.

Cross-Q. 130. Did you tell him that you were boring some through the winter?

A. I recollect of telling Mr. Storrow it was late in the winter.

Cross-Q. 131. I am not asking you about what you told Mr. Storrow, but what you told Mr. Keller. Did you tell Mr. Keller that you were boring some through the winter?

A. Not that I can recollect.

Cross-Q. 132. On what day did you have that conversation with Mr. Keller?

A. What little conversation I had was yesterday.

Cross-Q. 133. I will read you an extract from Mr. Keller's deposition, including the passage from cross-question 26 to cross-answer 35, inclusive. It is as follows:

"*Cross-Q. 26.* How long did Kissinger have the auger before he returned it?

A. I couldn't say exactly; I thought he had it about a year.

Cross-Q. 27. Who returned it to your place? Did Kissinger return it, or did you or somebody else go and get it?

A. I couldn't tell that right. He says he returned it himself, but I am not so sure.

Cross-Q. 28. How late in the fall do you think it was when he borrowed it?

A. Well, it might have been a little before the holidays; not long before New Year's, I think.

Cross-Q. 29. When did Kissinger tell you about returning the auger?

A. To-day, just before I came over.

Cross-Q. 30. Where did he tell you that?

A. Over here at the tavern—the Bolton House.

Cross-Q. 31. Did he tell you that he borrowed the auger in 1877?

A. We had been talking about it, but we didn't talk about the date, not exactly. He said it must have been middling late in the fall, if he got it in the fall; and I said I am pretty sure that he did get it in the fall.

Cross-Q. 32. Did he say that he got it in the spring?

A. No, he couldn't have thought that, because they were boring some through the winter, it appears.

Cross-Q. 33. Who told you they were boring some through the winter?

A. Why, he told me himself.

Cross-Q. 34. Who was present when you had that conversation with Mr. Kissinger?

A. I don't know whether anybody was that close that they heard it.

Cross-Q. 35. Who else was in the room at the time?

A. There was no one else in that I knew. There might have been one or so in yet that I didn't know."

I observe that Mr. Keller, testifying yesterday about a conversation that occurred yesterday morning between himself and you at the Bolton House, states under oath that, among other things, when speaking about getting the auger, you said it must have been middling late in the fall, if you got it in the fall; and you also told him that they (meaning you and your folks) were boring some through the winter; do you undertake to contradict Mr. Keller with regard to those statements that he has there sworn to?

A. Now, let me give you a little statement, will you? My friend Richard Shaw, there—I was talking to him; and if I talked to him about that, I have forgot it. I have no recollection of it. I could just as well tell you that we talked about the ram as tell you not, if I had any recollection about it. I hadn't saw my old friend for four or six years, and we were busy talking; and if Mr. Keller testified to that, why, it must be something of it.

Cross-Q. 134. But you, testifying now, only the next day after that conversation occurred, are not able to remember making the statements to Mr. Keller which he so testifies that you made to him; that is the fact, is it not?

A. I sat aside of my friend Shaw, talking to him; and he may have slipped in some words which was talked which has slipped my memory altogether.

[*Question repeated.*]

A. Yes, sir.

Cross-Q. 135. Your memory is not very good, is it?

A. It is as good as ever.

Cross-Q. 136. Do you remember telling Mr. Hill and Mr. Jacobs, near the front door of the Eutaw House, Baltimore, Md., about an hour after you finished your deposition there in August, 1882, that your memory had greatly failed of late years, and that you could not rely upon it?

A. I can't recollect of it.

Cross-Q. 137. If you did tell them that, then I judge from your 135th answer that the statement was not true; is that correct?

A. I don't know how to fit that.

Cross-Q. 138. Since you have been here in Harrisburg on this trip, have you had any talk with Mr. Al. Seidel about the settlement between you and Mr. Draper in the fall of 1878?

A. No, sir; I haven't saw him.

Cross-Q. 139. While here in Harrisburg on this trip, have you had any talk with Mr. Herman J. Eppler about anything connected with this case?

A. No, sir; not more than I said: "Are you here, too?"

Cross-Q. 140. What reply did he make to that?

A. If I mistake not, he said he didn't come here on purpose; he was going on further on business, or something to that effect.

Cross-Q. 141. Was that all the conversation you had with him about the case?

A. All I recollect.

Cross-Q. 142. I suppose your recollection of your conversation with him is about as reliable as your recollection of your conversation with Mr. Keller; is it not?

A. That is reliable.

Cross-Q. 143. Do you remember what you testified in your former deposition as to the date when you and Draper made your trip together to Drawbaugh's shop and ordered the ram?

[*Objected to as immaterial; the deposition speaks for itself.*]

A. Yes, sir.

Cross-Q. 144. What date did you fix for that trip when you testified in your former deposition?

[*Same objection.*]

A. 1878—1877 we made the trip.

Cross-Q. 145. Do you recollect in what part of 1877 you testified that you made the trip?

[*Same objection.*]

A. In the fall.

Cross-Q. 146. And I understand you now to testify again that that trip was made in the fall of 1877; am I correct?

A. Yes, sir.

Cross-Q. 147. Do you feel very certain that that was the time that the trip was made?

A. Yes, sir.

Cross-Q. 148. Since giving your former deposition in August, 1882, have you always felt entirely certain that that trip was made in the fall of 1877?

A. Yes, sir.

Cross-Q. 149. You have never felt any doubt on the subject, have you?

A. No, sir.

Cross-Q. 150. Have you ever informed anybody that that trip was not made in the fall of 1877, or that you thought that it was not made in the fall of 1877?

A. Not as I can recollect.

Cross-Q. 151. You say you have never had any doubt that the trip was made in the fall of 1877; why, then, are you not able to answer my last question positively?

A. Positively.

Cross-Q. 152. You mean that you never have informed anybody that that trip was not made in the fall of 1877, nor that you thought that it was not made in the fall of 1877; do you?

A. Not made? No, I don't recollect of any.

Cross-Q. 153. Did you ever inform anybody since you gave your deposition in August, 1882, that that trip was made in February, 1877, or that you thought that it was made in February, 1877?

[Objected to; if this inquiry relates to any particular time and place or person, or is intended to include any particular time and place or person, they should be specified.]

A. No recollection of it at all.

Cross-Q. 154. Can't you answer the question positively as to whether you ever did inform anybody so or not?

[Same objection.]

A. Yes, I can; positively.

Cross-Q. 155. Well, answer it positively; did you ever, or not, so inform anybody?

[Same objection.]

A. I informed no one.

Cross-Q. 156. Do you remember Mr. Draper's visit to Marysville in February, 1877?

A. Yes, sir.

Cross-Q. 157. Do you remember any circumstance that happened, or anything that was done by you during that visit in February, 1877?

A. Yes, sir.

Cross-Q. 158. What is it that you remember?

A. I paid him seven dollars.

Cross-Q. 159. Referring to the trip which Draper and you made to Drawbaugh's shop when you ordered the ram: have you ever, since you gave your deposition in August, 1882, informed anybody that you thought that trip was made during the visit of Draper to Marysville in February, 1877, in which you paid Mr. Draper the seven dollars?

[Same objection as to cross-question 153.]

A. Not in the spring.

[Question repeated.]

Same objection.]

A. I have no recollection of it at all.

Cross-Q. 160. Have you ever informed anybody that you thought that was the time of that trip, or not?

A. The time I gave my deposition in Baltimore I said something about that it might have been in the spring or fall, but that was a mistake.

Cross-Q. 161. Are you sure you said that in your deposition at Baltimore?

[*Same objection as to cross-question 143.*]

A. There is something like it; I can't say exactly how it is.

Cross-Q. 162. But I am asking you about what you have informed people since you gave your deposition at Baltimore. Have you never informed anybody that the time when you and Draper went over to Drawbaugh's shop was the year and the time when you paid Draper the seven dollars on February 22d, 1877?

[*Same objection as to cross-question 153.*]

A. Not as I know of.

Cross-Q. 163. Can't you answer the question positively whether you ever have informed anybody so or not?

A. I am positive.

Cross-Q. 164. Are you as positive about it as you are about anything else you have testified to?

A. As a matter of course.

Cross-Q. 165. Did you not inform Mr. M. W. Jacobs in February, 1883, that you then thought that the time when you paid Draper the seven dollars, on the 22d of February, 1877, was the year and the time when you made that visit to Drawbaugh's shop?

A. No recollection of it.

Cross-Q. 166. Can you say positively whether you did or did not so inform Mr. Jacobs in February, 1883?

A. I told Jacobs when he was down that it was in 1878. How can a man testify when there are a dozen of people coming to me? Both parties were up to me.

[*Question repeated.*]

A. I have no recollection at all.

Cross-Q. 167. But you have sworn here to-day that since you gave your former deposition in this case you have never had any doubt in your mind that the visit to Drawbaugh's shop was in the fall of 1877,

and that you never informed anybody it was at any other time. In view of these facts, are you not able to say positively whether in February, 1883, you did or did not inform Mr. Jacobs that you thought that trip to Drawbaugh's shop was made at the time when you paid Draper the seven dollars, in February, 1877?

[*Objected to for the same reason as question 153, and as a mere attempt to badger the witness.*]

A. I am positive.

Cross-Q. 168. Positive that you did not so inform Mr. Jacobs in February, 1883?

A. Yes, sir.

Cross-Q. 169. Will you please look at this letter which I now hand you, and state whose letter it is, and whose handwriting it is?

A. It is my handwriting.

[*Letter put in evidence to be marked "Exhibit Kissinger-Jacobs Letter, February 12, 1883," the letter being as follows:*

"Woodland, Talbot Co. M. D.

Feb. 12, 1883.

Mr. Jacobs sir i had intend to come up this winter But i find i cant yet i will rite a few Lines about the ram as i cant think enything more then i tole you i will send the accounts as they stand on the Memorandum.

Thomas Draper Account,	
1874 Ap, 12,98 Bushel of lime	\$11.75
Ap 20 to 250 Bushel Gas lime	8.10
to Lumber for Gate	25
to 125 B of lime	15.62
to 300 B of Gas lime	8.60
to cash paid on rent	25.00
County Tax	24.00
Sep 13, 1875 Lime	31.25
1875	
Nov 30 to Cash on rent	25.00
December 17 Cash on rent	25.00
Ap to 125 Bushel of lime	15.62
Sep to 250 B of lime	31.25
to nob and key	31
Feb 22 1877 to cash	7.00

the year and time i paid Mr. Draper them 7 dollars was the time I think we were over at the shop and i Ben thinking over and over to help you on Trile For i would Like to see you get out all right it is the Best i can Do i would Do all i can for you if this account wil do you eny Good Drop me a card and i will send you the Book By return mail there is one man Came to my mind that might no little about it if you havent him L. C. Steinberger as i was Glad that you had found epply i think he can do you more good then i can Do on the other side. Some one left the Bell

party no that we had been Down to see Draper Mr. Starer was Down to see me what was Don i tole him we could do anything more out than was this is about all i no at present

Yours truly

Geo. W. Kissinger,

Dont say eny thing about this letter if i can get up i will Call to see you.

Objected to on account of Q. 153.]

Cross-Q. 170. In this letter I find what purports to be a copy of your memorandum of account with Draper, the last item of which is as follows:

"Feb 22, 1877 to cash 7.00"

Immediately following which are these words: "The year and time i paid Draper them 7 dollars was the time i think we were over at the shop;" what shop did that refer to?

[Same objection.]

A. Why, I suppose it referred to Drawbaugh's.

Cross-Q. 171. And who was meant by the "we" that were over at the shop?

[Same objection.]

A. I don't understand.

Cross-Q. 172. In the letter you say: "The year and time I paid Draper them 7 dollars was the time i think we were over at the shop"—the time who were over at the shop?

A. "We" must have been me and Draper; I don't know who else, unless some one else went along over. *[After a pause.]* I wish I could just get up and say what I think.

[The portion of answer after the pause is taken down at request of defendants' counsel.]

Cross-Q. 173. Get up and say what you think.

[Objected to as incompetent, immaterial, merely an attempt to irritate and annoy the witness for the purpose of preventing the proper and orderly taking of the deposition; and the attention of the Court is called to the persistence with which this plan of annoyance has been followed this afternoon.]

A. Mr. Jacobs and Mr. Drawbaugh came to my house five, six, or seven times; him and different other ones came down there, and wanted to make me believe things that never was; and when they came down even to Easton, they wanted to make me say things that even would have

perjured me at the very last hour. I told them everything I knew on their side that was true. When Jacobs came down, he wanted to know about the date when I was over; I told him on the first visit; the second visit it was in 1878. And to tell me that any man of my understanding can stand down and let dozens of them come to my place, and tell me to let them know when the other party was down—there it is—and I am sorry to-day that ever a pen went to Jacobs.

I am a friend to Drawbaugh, and stayed up till almost twelve o'clock hunting papers to interest him. Now, turn around and go right back against me, and do all they can against me. Now I have got all the blame to carry, and all the black looks—black as hell—I have got to carry on my shoulders, just because that I didn't come and swear that this was thus and so on the other side, which I never will do, and never can do, although the party told me that I was bought. The People's party haven't got money enough to buy G. W. Kissinger, nor the Bell Telephone Company haven't got money enough to buy me, I want you to understand. No Bell man ever shall put his foot into my house after this, I want you to understand. Did I say Bell Telephone Company? I was mistaken—People's Telephone Company is what I meant. As mean as I have been treated and pulled around because I wouldn't lie for them, when I did all I could for them. They didn't come as these gentlemen came; they came as gentlemen come. Now, close up, and I'm going home.

Cross-Q. 174. Mr. Kissinger, neither Mr. Jacobs, nor Mr. Drawbaugh, nor any one else upon the side of the People's Telephone Company were at your place in Maryland when you wrote this letter—Exhibit Kissinger-Jacobs Letter Feb. 12, 1883; am I not correct in that?

[*Same objection as to cross 169.*]

A. Yes, sir; there was nobody there.

Cross-Q. 175. You wrote the letter and mailed it to Mr. Jacobs' address at Harrisburg, didn't you?

[*Same objection as to cross 169.*]

A. Yes, sir; I was a friend of Drawbaugh's people or party.

Cross-Q. 176. And then you forgot all about the letter, and forgot that you had ever thought that the time of the visit which you and Draper made to Drawbaugh's shop was in February, 1877, did you not?

[*Same objection.*]

A. I never forgot the letter; I knew that letter would come out.

Cross-Q. 177. Then, without forgetting the letter and knowing that

it would come out, you testified here, under oath, this afternoon, that you never gave Mr. Jacobs such information as is contained in this letter; is that the fact?

A. It says "I think;" I didn't give it positive. I told you I was going home.

Cross-Q. 178. Is that your explanation of your testimony here this afternoon?

A. Yes, sir.

[At this point complainants' counsel insists on an adjournment, and calls attention to the fact that the witness has been on the stand three hours since recess; that it is now five o'clock, P. M., and that the usual hour for adjournment is half past five.]

Adjourned until June 18, 1884, at 10, A. M.

JUNE 18, 1884, 10, A. M.

Examination resumed.

Present, same counsel.

Cross-examination of George W. Kissinger by Mr. Hill, continued:

Cross-Q. 179. You have stated in your direct examination that when you, in your former deposition, testified that you brought the ram from Drawbaugh's shop you made a mistake, and that you now remember that you only brought some tools; what tools did you bring up from Drawbaugh's shop?

A. Tongs.

Cross-Q. 180. Didn't you bring up a pair of pipe-tongs and a wrench?

A. Yes, sir, of course; what tools—I considered tools—and some pipe I brought along. I can't name just all the tools I brought, but they were tools for the ram.

Cross-Q. 181. You brought up the necessary tools for putting in the ram; is that the idea?

A. Yes, sir.

Cross-Q. 182. What pipes did you bring up at that time when you brought the tools?

A. I brought two half-inch pieces and one two-inch, if I am correct; I can't recollect if I brought it at that time or not.

Cross-Q. 182½. When you brought up the tools and the two half-

inch pieces of pipe, did you bring Mr. Drawbaugh up at the same time?

A. No, sir.

Cross-Q. 183. Did you bring him up when you brought up the piece of two-inch pipe?

A. No, sir; I went after him afterwards, and met him on the way coming up.

Cross-Q. 184. At what time did you cut down the trees to get the logs for the wooden pipes for that ram?

A. I cut some—maybe I cut two or three—about the holidays; the balance I cut in the spring—in 1876—about Christmas. No, I am mistaken. [After studying awhile witness continues.] It was early in the spring of 1878 and late in the fall of 1877; that is correct.

Cross-Q. 185. When did you begin to dig the trench in which those wooden pipes were laid?

A. We commenced before we had all the logs bored.

Cross-Q. 186. When did you begin to bore the logs?

A. Somewheres very early in the spring of 1878.

Cross-Q. 187. When did you finish boring the logs?

A. Well, I can't tell you the day when I quit. It was, I suppose, somewheres in the latter part of May, as near as I can get at it.

Cross-Q. 188. And you laid some of the bored logs in the trench before you had completed the boring of all the logs, did you?

A. Yes; according to my best recollection, we laid some.

Cross-Q. 189. When you laid those log-pipes in the trench before you finished boring all of them, did you fill in the dirt and cover the logs as you laid them in?

A. We covered the first ones we laid in, on account of the stock getting over them.

Cross-Q. 190. The first ones were those laid up at the spring, I suppose, were they?

A. Yes, sir; we had to lay that first and shut it up, to keep the water from getting down into the balance of the ditch.

Cross-Q. 191. After you laid those logs and covered them up, how long was it before you laid the balance of the wooden pipes?

A. Well, we laid them at different times; whenever we had time we laid some; I can't tell how long.

Cross-Q. 192. How long was the last wooden pipe laid before the ram was put in?

A. I am not able to tell you exactly how long ; it was a middling considerable time.

Cross-Q. 193. How long was the ram put in before Mr. Wagner stoned up the pit?

A. If I am right, he came on the day after the election ; and I think that day and part of the next one ; I can't recollect what day the election was any more—I think, if I am right.

Cross-Q. 194. How long was the ram put in before the election ?

A. It was finished on the day of the election.

Cross-Q. 195. Was the wooden pipe all put in before you got the iron pipe ?

A. Yes, sir.

Cross-Q. 196. You have referred in your examination-in-chief to a visit which Mr. Draper, Mr. Church, and Mr. Fenn made to you about two weeks ago, at Easton, Md., (see question and answer 18) ; how long did that interview between you, Mr. Church, Mr. Draper, and Mr. Fenn last, and where did it take place ?

A. It took place in Easton, Md. ; the time I can't hardly tell ; I suppose it took maybe an hour—maybe not so long, and maybe a little longer.

Cross-Q. 197. Do you distinctly remember that interview and the substance of the conversation that took place there ?

A. Some of it.

Cross-Q. 198. That interview was at the brick hotel, was it not ?

A. Yes, sir.

Cross-Q. 199. You never had but that one interview at the brick hotel with those three gentlemen, did you ?

A. That is all.

Cross-Q. 200. You say you remember some of the conversation that took place at that interview, or the substance of some of it ; so far as the conversation there related to the letter of May 30, 1875, and to the things mentioned in that letter, don't you remember the substance of all that part of the conversation ?

A. I think I do.

Cross-Q. 201. Have you any doubt about it ?

A. No, sir.

Cross-Q. 202. I wish you now to think carefully about that conversation at the brick hotel with those gentlemen, and, remembering that you are under oath, and are responsible for what you say, tell me if Mr. Church did not ask you then and there whether the pipes that are mentioned in that letter of May 30, 1875, were or were not pipes for the ram ?

[Complainants inquire whether the respondents have any paper written or signed by the witness at that interview stating anything about those pipes or about that letter.

Respondents reply that they have.

Complainants object that it is not competent for the defendants to cross-examine the witness touching those matters, without first producing the paper, and putting it into his hands for him to examine. And the complainants instruct the witness not to answer the question until that is done.

Respondents call the attention of the Court to the fact that the interrogatory which has just been put makes no inquiry about said paper, and refers to it in no way whatever, but simply inquires as to whether Mr. Church, on the occasion referred to, did or did not ask the witness a certain question; and that the interrogatory now put to the witness is strictly proper cross-examination as to the matters inquired of by complainants' counsel in his interrogatory 21. And if complainants' counsel insist upon their instruction to the witness, they must take the consequences of his refusal to answer. It will be time for the complainants to object when the respondents offer that paper in evidence, if they shall at any time hereafter so offer it.

Complainants call attention to the call made on the defendants after cross-interrogatory 11, in the deposition of W. K. Fenn, (defendants' surrejoinder, page 217,) and state that in view of the course pursued by the defendants in the cross-examination of Herman J. Eppler, (complainants' rejoinder, page 2239, and elsewhere,) and in cross-examination of this witness yesterday, they think it proper to take and to enforce the objection in limine.

Respondents say that the time to enforce an objection about a paper is when an objectionable paper is introduced or inquired about, and not when a question is put which has no relation to it, but to another thing entirely. And respondents' counsel now insists upon the interrogatory being put to the witness and answered by him.]

A. (Under the instruction of complainants' counsel the witness does not answer.)

Cross-Q. 203. In your examination-in-chief, complainants' counsel, referring to the interview between you, Mr. Church, Mr. Fenn, and Mr. Draper at Easton, Md., about two weeks ago, and to the letter of May 30, 1875, which you had previously testified was shown to you at that interview and admitted by you to be genuine, put to you this interrogatory, to wit:

"Q. 21. Did you tell these gentlemen or any of them at that visit in substance that the pipes referred to in this letter were for the ram?"

To which interrogatory you replied, "No, sir." I now ask you whether Mr. Church, at that interview, did not inquire of you what the pipes referred to in that letter were for, and if they were for the ram or something else. Did he, or not ask you that question in substance?

[Complainants repeat the same objection and instruction as to the preceding question.]

A. (Under the instruction of complainants' counsel, witness declines to answer.)

[Respondents' counsel states that, believing the intent of complainants' counsel to be the vitiating of this deposition so that it will be thrown out by the Court, and not desiring that result, respondents here waive any use of the said paper to contradict the witness on the subject-matter of complainants' 21st interrogatory-in-chief. And with that waiver repeat the interrogatory and demand an answer to it.]

The complainants call attention to the fact that the objections above taken are not objections to the production of the paper, nor based upon the slightest fear that there is anything in the paper which can contradict the witness. They would be very sorry to have the direct examination, or any part of the cross-examination which is competent, stricken from the record, and they do not wish the defendants to waive any right. The complainants inquire whether the defendants waive all use of that paper for any purpose.

Respondents reply that the objection taken by complainants is taken to the interrogatory propounded, and when the respondents waive the use of the paper for any purpose relating to said interrogatory, they have a right to have the interrogatory answered; and they repeat the interrogatory and demand an answer.

Complainants repeat the objections and the instructions to the witness.

Under the instruction of complainants' counsel, witness declines to answer.

Respondents now object to the entire deposition of this witness, and give notice that they shall move to strike it out by reason of the complainants' instruction to the witness not to answer and the witness' refusal to answer; and upon that ground, and without waiving this objection or notice, they continue the cross-examination, de bene esse.]

Recess until 2, P. M.

[*Respondents' counsel, still insisting upon his objection above taken, calls the attention of the Court to the fact that Mr. Draper, in his recent deposition, in answer to re-direct interrogatory 151, communicated to complainants' counsel full information as to the character of the paper which complainants have above called for, Mr. Draper's language in that answer being as follows: "Then, I think, Mr. Church wrote a little acknowledgment of the letters with a pencil on a piece of paper, and showed it to Mr. Kissinger. He said he couldn't see it, and borrowed my glasses and read it. He then sat down and wrote his name on it, or wrote something; I didn't read it; I suppose it was his name."*

Respondents' counsel now produces the paper in question, dated the 2d day of June, 1884, and puts it in evidence as "Exhibit Kissinger Acknowledgment of Letters." It is as follows:

"TALBOTT Co., }
Maryland, } ss:

I, George W. Kissinger, have read the accompanying letters written by me to Mr. Thomas Draper, dated May 30, 1875, Feb. 13, 1874, Nov. 30, 1875, and they are to the best of my knowledge and belief in my handwriting, were written at the times they are respectively dated; that I have read the said letters, and particularly remember the circumstances detailed in the letter of May 30, 1875, about the pipes and peach trees.

Witness my hand this 2d day of June, 1884.

GEO. W. KISSINGER.

Witnesses:

W. K. Fenn.

Melville Church."

Complainants say that they have not called for the production of that paper during Mr. Kissinger's deposition.]

Cross-Q. 204. At that interview between you, Mr. Fenn, Mr. Draper, and Mr. Church, at Easton, on the second day of June, 1884, did Mr. Church inquire of you what the pipes, referred to in the letter of May 30, 1875, were for?

A. I don't know whether Church himself asked me that or not, but some one asked me; and I said that them pipes were not concerning the ram at all; I said particular, that they weren't for the ram.

Cross-Q. 205. Are you entirely sure that you said that?

A. Yes, sir.

Cross-Q. 206. Did you not during that interview, in reply to a question asked you by Mr. Church, tell him that the pipes referred to in the letter of May 30, 1875, were intended for the ram, or words to that effect?

A. No, sir.

Cross-Q. 207. 'Are you perfectly certain that you made no such statement to those gentlemen, or any of them, at the time of that interview ?

A. Yes, sir.

Cross-Q. 208. In the deposition of Mr. Thomas Draper recently taken at Dover, complainants' counsel, subject to respondents' objection, put the following interrogatory to Mr. Draper :

" *Cross-Q.* 88. Didn't Mr. Kissinger say while you were there, that the pipe spoken of in that letter were pipes which he spoke of putting in to run the water from a spring up on the hill-side up to the house without pumping ? "

To which Mr. Draper, after the objection of respondents' counsel, answered as follows :

" No, sir ; he said they were pipes spoken of when we first spoke of running the water from the spring to the ram, or to where they put in the ram. He said he had been bothered more over that old ram than all the rams in the country were worth, I believe, and he wouldn't be bothered any more."

Do you swear that Mr. Draper's statement in that answer is not true ?

A. Not true.

Cross-Q. 208½. When Mr. William K. Fenn was under examination as a witness in this case a few days ago, he was interrogated concerning that interview of June 2, 1884, and concerning the letter of May 30, 1875, as follows :

" *Q.* 10. Did he [meaning you, Geo. W. Kissinger,] during that interview say what those pipes were for which were mentioned in that letter or not ? "

To which interrogatory Mr. Fenn answered as follows :

" Yes ; he said the old iron pipe was some that he expected to get for the ram. Mr. Church asked him the question as to whether the iron pipe referred to was intended for the ram or not, or for anything else, and Mr. Kissinger replied : ' They were for the ram. ' "

Is that testimony of Mr. Fenn true, or not ?

A. I would like to have a little explanation—I mean make a little statement.

[*Mr. Storrow says: " You had better answer the question." Mr. Hill says: " Let the witness make his own statement." ,]*

[*Question repeated.*]

A. Not true.

Cross-Q. 209. Mr. Church, who was present at that interview, has informed me that at that interview, after you had read the letter of May 30,

1875, and acknowledged it to be your letter, he (Mr. Church) put to you in substance the following question :

"George, what were those pipes that were mentioned in that letter for—were they for the ram or for something else ?

To which you replied :

"They were for the ram."

Is the information which I have received from Mr. Church true, or not ?

A. Not true.

Cross-Q. 210. Did you not make the statement to those gentlemen, or any of them, at that interview, that the pipes mentioned in "Exhibit Kissinger-Draper Letter, May 30, 1875," were for the ram, and since that interview forgot the fact of making such statement to them ?

A. I didn't forget it.

Cross-Q. 211. Then it is a pure question of truth and veracity between those gentlemen and yourself, is it not ?

[*Question objected to as not competent in its nature, and because it misstates the condition of the evidence upon the subject.*]

A. It is all true.

Cross-Q. 212. Do you mean that their statements are true, and yours are true also on the point I have just been inquiring about ?

A. My statement is true.

Cross-Q. 213. Mr. Kissinger, will you tell us, as fully and completely as you can remember, in words or in substance, or both, all that was said and done during that interview at the brick hotel, at Easton, on June 2d, 1884 ?

A. What does that mean ?

[*Examiner explains question to witness.*]

A. Well, when we got to Easton together in the hotel they commenced with me about some things that never happened. Draper said I had cut logs—now recollection—whether it was in the spring of 1875, or in the spring of 1874—I can't recollect. I told Mr. Draper, says I : "By God, you know that that ain't true."

Then he brought up the ram—said he had a contract that I was to put it in for sixty dollars ; and I told Draper that he knowed better than that.

Then came the letters. I read the letters, and said they were my handwriting. I said there was nothing in the letters concerning the ram. There was one letter I said, then, that mentioned pipe, but it wasn't concerning the ram. And I told him that the pipe of that letter was to bring

the water down from the upper spring and up the other hill as far as it would go.

Then he put his paper back, and said : " I talked about that the first time you lived on the farm." Then I sprung off the chair, slapped my hand on the table, and said : " Is that all you came for—to try to persuade me things that never was ? " Well, I can hardly tell what I said then, but it was something about pulling me all over the country. I was a friend of Drawbaugh at one time, I said, and then he pulled and harassed me all over the country. Then I said that people said that I was bought. I told them Talbot county could not buy me. Then I said I was blamed for a heap of things about their turning—giving in their evidence the other way. Then I said : " Thank God, my shoulders are wide enough to carry it all."

Then I got all the black looks. Then Mr. Church, sitting on a chair, he got up, and said he : " We want just simply you to acknowledge these letters." Then he wrote this paper that I signed. Then I sat down, and looked at it, and read it, and, said I : " I don't think I ought to sign this unless both parties are together." Then Draper said : " It's no harm," or " It's all right that you should sign," or something that way, " as you acknowledged it." Then Mr. Church came there to the desk, and said : " We only want you to sign this so you needn't come on the stand." Then Mr. Fenn got up, and said : " You recollect you gave in your testimony that Mr. Draper wasn't up in 1874." Then I said : " It may be, and it may not." That is about all, as near as I can get at it; and then we parted.

Cross-Q. 214. You say that Mr. Church said : " We only want you to sign this so you needn't come on the stand." Didn't Mr. Church tell you that the respondents didn't intend to put you on the stand—that they had no idea of putting you on the stand ?

A. I don't understand that.

Cross-Q. 215. What is there about it that you don't understand ?

A. Read it over, if you please. [Question 214 read to witness.]

A. The lower part of it.

[*Examiner explains to the witness that " respondents " means the Drawbaugh party.*]

A. That was intended for Drawbaugh—signing that—so that he wouldn't summon me up here to acknowledge those letters, if I am right.

[*Question 214 repeated.*]

A. I recollect nothing of that.

Cross-Q. 216. In question 90 of your examination-in-chief, complainants' counsel, referring to "Exhibit Kissinger-Draper Letter, February 13, 1874," asked you the following question:

"Q. 90. Is that one of the letters which Mr. Draper showed you at Easton about a fortnight ago?"

To which you replied, "No, sir."

I find in the "Exhibit Kissinger Acknowledgment of Letters" that you enumerate the letter of February 13, 1874, as one of the letters which you read at that interview. With your memory refreshed by this paper, please answer the question again: "Was that one of the letters that Mr. Draper showed you at Easton about a fortnight ago?"

A. There were three letters that I think I read.

Cross-Q. 217. That does not answer my question. Was that letter of Feb. 13, 1874, one of the letters that Mr. Draper showed you at that interview?

A. Yes, sir.

Cross-Q. 218. When you answered Mr. Storrow's question 90, had you forgotten all about reading that letter at Easton about two weeks ago?

A. I don't know what the question is.

[Examiner reads question 90 of witness' examination-in-chief.]

A. The same letter. I misunderstood that of Mr. Storrow.

Cross-Q. 219. Do you mean that you misunderstood Mr. Storrow's question 90?

A. Yes, sir.

Cross-Q. 220. Are you sure you did?

A. It must be so; it is the same letter.

Cross-Q. 221. Questions 89 and 90 are as follows:

"Q. 89. Please look at the letter now produced by the Examiner and state whether you wrote it.

A. Yes, sir; it is my handwriting.

Q. 90. Is that one of the letters which Mr. Draper showed you at Easton about a fortnight ago?

A. No, sir."

How could you misunderstand so plain a question as that?

A. That was—saying "no" meant "yes."

Cross-Q. 222. You mean that you understood the question, but gave the wrong answer; do you?

A. Yes, sir.

Cross-Q. 223. Will you explain to the Court, then, why you just testi-

fied, not ten minutes ago, that you misunderstood Mr. Storrow's question 90, which you now testify you did not misunderstand?

A. Well, "no" means "yes" in the one, because I misunderstood it; but I don't know how to correct that.

Cross-Q. 224. You first testified that Mr. Draper did not show you that letter at Easton about a fortnight ago; and then you testified that he did show you that letter at that time; and then you testified that you misunderstood Mr. Storrow's question about it; and then you testified that you did not misunderstand Mr. Storrow's question about it; and now you testify again that you misunderstood it. As a matter of fact, do you know whether you misunderstood Mr. Storrow's question or not?

[*Question objected to as merely argumentative, and an attempt to badger the witness.*

Respondents' counsel replies that it is intended for no such purpose, but for two other purposes, to wit: First, to show the Court the utter unreliability of this witness; and, secondly, to try to find out whether the witness knows anything about the matter concerning which he has made these heterogeneous and contradictory statements.]

A. I think I must have misunderstood it, or something.

Adjourned until June 19, 1884, at 10, A. M.

JUNE 19, 1884.

Examination resumed.

Present, same counsel.

Cross-examination of George W. Kissinger, by Mr. Hill, continued:

Cross-Q. 225. You have stated that the logs used for wooden pipes to lead the water from the spring to the ram were made from trees cut on the Draper farm, and that you and your sons did the boring of those pipes. Did you charge Mr. Draper anything for cutting those trees and boring those logs?

A. I don't recollect whether we charged him anything or not.

Cross-Q. 226. If you have any recollection at all about it, please state what your best recollection is.

A. My recollection is that when we had the pipe all bored, and the pipe in and the ram in, we calculated all the cost.

Cross-Q. 227. What was the amount of Mr. Drawbaugh's bill for the ram and the materials that he furnished and the work that he did?

A. Fifteen dollars for the ram and five dollars, if I am not mistaken—something like five dollars—for the pipe, and four dollars for putting it in, as near as I can recollect, and for some connections to put the pipe together; I don't know what exactly now; and his bill, if I am not mistaken, was twenty-seven, or near twenty-seven, dollars when it was presented to me.

Cross-Q. 228. How many pieces of two-inch iron pipe did you get from Mr. Drawbaugh?

A. I can't tell you whether it was two inch or inch and a half—one piece.

Cross-Q. 229. How many other pieces of iron pipe did you get from Mr. Drawbaugh besides that piece?

A. Two pieces, if I am correct; it was half-inch pipe.

Cross-Q. 230. How many other pieces of iron pipe did you get besides the pipe which you got from Mr. Drawbaugh and the new pipe which came by the railroad from Morris, Tasker & Co. in 1878?

A. The two-inch pipe—I got one piece in Harrisburg, up on Third street, if I am not mistaken—a piece about sixteen feet long—from a plumber; and the other piece I am at a loss, but think I got on Second street below the market; and then I got the goose-neck with a turn above for it to come out of—I think I got that below on Second street; that was half-inch pipe.

Cross-Q. 231. How much did that pipe cost you that you got in Harrisburg?

A. The piece I got on Third street, I think, cost me nineteen cents a foot, and the other—I have no recollection what the others cost.

Cross-Q. 232. I meant, what was the total cost of the pipe you got in Harrisburg?

A. I can't tell you; I had it on a strip of paper when I bought it, and I had it until me and Mr. Draper settled.

Cross-Q. 233. You state that Mr. Drawbaugh's bill was about twenty-seven dollars. Did that include the cost of the pipes which he procured for you at Philadelphia?

A. No, sir; I sent the money over to Mr. Drawbaugh for the pipe.

Cross-Q. 234. Did you pay Mr. Drawbaugh any part of his bill of twenty-seven dollars at or before the time when you settled with Draper in November, 1878?

A. Not that I can recollect, unless in some fruit that I hauled over, but I had an account against him that about balanced.

Cross-Q. 235. You state that Mr. Drawbaugh's bill was about \$27, Morris Tasker's bill for the new pipe was, in gross, \$14, making a total, according to your statement, of about \$41 for the ram, the materials which Mr. Drawbaugh furnished, the work which he did, and the new pipe procured from Philadelphia. In settling with Mr. Draper you charged Mr. Draper \$60. for the expenses of the ram, did you not?

A. It didn't come quite to \$60. when we settled, and, says he, "Well, make it \$60."

Cross-Q. 236. Now, inasmuch as the ram, the materials which Mr. Drawbaugh furnished, the work which he did, and the pipe which came from Philadelphia, all amounted to only about \$41, will you tell us what the other \$19 were for which you charged Mr. Draper for expenses of ram?

A. I can't recollect what the expenses were, but I know that we calculated it up, and he must have allowed me something for digging the ditch and for putting it in; yet we added it all together, and I left it, as much as I could, all to him.

Cross-Q. 237. But, as a matter of fact, you don't recollect whether you charged him for the work done in getting out the logs and boring them or not, do you?

A. I can't recollect of charging him anything for it only what he allowed me.

Cross-Q. 238. And you can't recollect charging him anything for the work of digging the trenches and putting in the pipes, can you?

[Question objected to because it has already been answered in substance, and because, in its present form, it is ambiguous and misleading.]

A. I can't recollect anything of it. We had four years settlement, and a man can't recollect in ten years everything that he does.

Cross-Q. 239. You have stated that you remember a visit which Mr. Draper made to Marysville in April, 1875, at which time he showed you how to trim the peach trees, and you and he had a talk about getting some pipes; is your memory about that visit very clear?

A. Yes, sir.

Cross-Q. 240. Tell us all that you remember that was said or done between you and Mr. Draper during that visit?

A. The pipe—he told me when he would go home that he would look in Philadelphia for earthen pipe, or when he would get to Philadelphia; I don't know whether he said when he went through or whether it was some other time. He told me that they wouldn't an-

swer the purpose. I wrote back in reply that I thought I could get old pipe at home that would answer, or something that way; and we walked up to the upper spring—"If this spring was dug up the hill six or eight feet, that you would have water enough to run it up"—a little over half up the hill he thought. That is about as near as I can give it.

Cross-Q. 241. You say he told you that they wouldn't answer the purpose; I suppose you mean that after he got home he wrote you that they wouldn't answer the purpose, do you?

A. Of course he wrote to me, or I wouldn't know anything about it.

Cross-Q. 242. What has become of that letter?

A. Burnt up.

Cross-Q. 243. When was it burnt up?

A. I burnt my letters all up just a few days before I left the farm, and of course it was among the papers that I burnt.

Cross-Q. 244. When did you last read that letter?

A. That is hard for me to tell.

Cross-Q. 245. Of course you read it when you received it; have you any recollection of reading it since that time?

A. No, sir; I often pick up letters that lie on the table, and read it over a second time after it comes. I often do that, but whether I did that one I can't remember.

Cross-Q. 246. In the 240th interrogatory I asked you to tell me everything that was said and done between you and Mr. Draper during his visit to Marysville in April, 1875. In your reply you referred to only two things, to wit: First, what was said about his looking for earthen pipe in Philadelphia; and, secondly, the fact of your walking together to the upper spring and talking there about digging up the hill six or eight feet, so as to run the water a little over half way up the hill; are those two things the only things that you can remember that were said or done between you and Mr. Draper during that visit?

A. That is all I know of. We talked; we might have talked about some other things; we didn't talk all the time about the spring, but we were talking a long time of it.

Cross-Q. 247. You have testified that you remember that visit very clearly; how long have you remembered it very clearly?

A. Why, a good while; because we wanted the water up to the house very bad.

Cross-Q. 248. Have you remembered that visit very clearly ever since it was made?

A. I didn't think of it every year.

Cross-Q. 249. I did not ask you whether you thought of it every year, but whether you remembered it ever since it took place?

[Objected to, as the question has been substantially and fairly answered.]

A. I remembered it very distinctly when we met at the brick hotel at Easton, Md. I remembered it when it came to my mind; I knew it to be a fact.

Cross-Q. 250. Did you remember it before that time?

A. Why, I remembered it when I lived on the farm at the time it was written—I said "written"—when we talked about it.

Cross-Q. 251. If you had not seen that letter of May 30, 1875, nor been told of its contents, would you have been able to fix, from memory, the year in which Mr. Draper made that visit to Marysville; and if so, how would you have fixed it?

A. Well, I don't suppose I could have dated it exactly, but I could have come pretty near it. I knowed it was the first time he came up that we talked about it, and I knew the conversation. Of course, I kept no memorandum—because my wife said "when Draper comes up, try to get him to get the water up;" that was before he came up, you know.

Cross-Q. 252. Wasn't Mr. Draper up to your place in the year 1874?

A. I can't get no trace of him at all, being up.

Cross-Q. 253. You can't say, under oath, whether he was up in the year 1874 or not, can you?

A. I won't answer that question.

Cross-Q. 254. I have a right to have it answered, as it is a fair question and is within your power to answer correctly; and I request an answer to it.

A. It is not likely he would come up in the fall of 1874, and then come up in the spring of 1875 again. I can't get no trace of him, and I don't want to swear to anything I am not positive of; that, you know, I won't say.

Cross-Q. 255. Then you decline to answer it because you are not positive about it; is that the fact?

A. Yes, sir.

Cross-Q. 256. When you had your interview with Mr. Draper, Mr.

Fenn, and Mr. Church, at Easton, about two weeks ago, did not Mr. Draper ask you, in substance, whether you remembered the circumstance of him and you being up in the woodland on the mountain side at one time, and his calling your attention to some timber there, and saying that he wished he had that timber at his home in Delaware, for he could make use of it there?

A. Yes, sir.

Cross-Q. 257. When he asked you that question at Easton during that interview, what reply did you make to him?

A. I think I told him that there was something of it.

Cross-Q. 258. You told Mr. Draper that you knew it was in the fall of the year that that conversation in the timber took place, did you not?

A. I don't know whether I said it was in the fall or spring—don't recollect; I was a little on a high horse then.

Cross-Q. 259. When the Bell Telephone Company was taking testimony at Philadelphia this spring you were there at Philadelphia, were you not?

A. Yes, sir.

Cross-Q. 260. How long were you there?

A. About six days; with the pieces of days, it might, maybe, have been seven days.

Cross-Q. 261. Did you stay at the Hotel Lafayette?

A. Yes, sir.

Cross-Q. 262. How happened you to come up there to Philadelphia at that time, and remain there six or seven days?

A. I was brought there.

Cross-Q. 363. Who brought you there?

A. Mr. Howson.

Cross-Q. 264. One of the counsel for the Bell Telephone Company.

A. Yes, sir.

Cross-Q. 265. What were you brought there for, if you know?

A. I was brought there to see about some roots that grewed in some pipe.

Cross-Q. 266. What was said there at that time while you were at Philadelphia about the upper spring, and about getting water from it to run up towards the house?

A. There was nothing said about that.

Cross-Q. 267. Your interview with Mr. Draper, Mr. Church, and Mr.

Fenn at Easton, was on June 2d, 1884; how soon after that was John C. Comfort at Easton?

A. The next day.

Cross-Q. 268. About what time of day?

A. About three o'clock, I suppose—the time the cars arrive.

Cross-Q. 269. Did you and he go anywhere together that day; if so, where?

A. We left the depot, and went up to the little brick hotel.

Cross-Q. 270. Did you meet him at the depot?

A. Yes, sir.

Cross-Q. 271. How happened you to meet him there?

A. By message.

Cross-Q. 272. He telegraphed to you to meet him there, did he?

A. Yes, sir.

Cross-Q. 273. Had you telegraphed to him that day, or the day before?

A. No, sir.

Cross-Q. 274. Had you telegraphed to anybody that day, or the day before?

A. No, sir.

Cross-Q. 275. Did Mr. Comfort tell you that he followed Mr. Church and Mr. Fenn to Easton?

A. He told me he was on the track of them.

Cross-Q. 276. Did he blame you for signing that acknowledgment of the letters?

A. He didn't blame me; he said he wouldn't have done it.

Recess until 2, P. M.

Cross-Q. 277. In your 173d cross-answer you state that Mr. Jacobs and Mr. Drawbaugh came to your house five, six, or seven times—him and different other ones—came down there and wanted to make you believe things that never was; and when they came down even to Easton they wanted to make you say things that even would have perjured you at the very last hour. Will you name all the persons who ever came to your house to see you, or to Easton to see you, on behalf of the Drawbaugh side of this case?

A. Jacobs and Drawbaugh, and Jacobs and Drawbaugh again, and Jacobs and Drawbaugh again, if I am not mistaken, and Jacobs and

Fenn, and Fenn by himself. At Easton, Church, Fenn, and Mr. Draper—well, Mr. Draper didn't belong to them.

Cross-Q. 278. Mr. Drawbaugh never came to see you except in company with Mr. Jacobs, did he?

A. That is the only time he came that I can recollect of.

Cross-Q. 279. In your 277th answer you say that Jacobs and Drawbaugh came to see you, and Jacobs and Drawbaugh again, and Jacobs and Drawbaugh again, if you are not mistaken. Then you may be mistaken about Jacobs and Drawbaugh being there together three times, if I understand you?

[*Objected to as immaterial, and that the defendants by cross-examining upon that subject make the witness their witness and are bound by his answers.*]

A. They were three times or more.

Cross-Q. 280. You are positive about that, are you?

[*Same objection.*]

A. I am positive they were there three times, and if I am not mistaken, they were four times there. Please let me name them?

Cross-Q. 281. Go on.

A. The first time Mr. Drawbaugh was at my house—and Jacobs—with their instruments; the next visit was about nine o'clock in the evening; the next visit was for Dover; the next visit they came from Mr. Swartz's, and I was making cider; and in the evening they returned to my house, if I am not mistaken. That makes four visits. It may be that they were more to my house. I put no dates down. The next visit was Mr. Jacobs and Mr. Fenn, and then Fenn. That is as near a statement as I can give you.

Cross-Q. 282. You say that when they came down even to Easton they wanted to make you say things that even would have perjured you at the very last hour. That occasion, I suppose, was the occasion when Mr. Draper, Mr. Church, and Mr. Fenn met you at Easton, was it?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 283. What was it they wanted to make you say that would have perjured you at the very last hour?

A. I call it perjury when a man wants to make a man believe things

that are not so, and swear to it. I call that perjury; which they did—say things which never happened.

Cross-Q. 284. That evades my question. I want to know what they wanted to make you say that would have perjured you?

A. Why, he wanted me to say that I had cut timber, and I told him that there never was a thing of that kind—never was such a thing. And he said: "George, don't you know that I told you I wouldn't pay for boring that timber?" Now, if that ain't trying to get a man to say something that ain't so——

Cross-Q. 285. You state that he wanted you to say that you had cut timber. Give us his words.

A. Well, I told you his words; I can't tell you any more.

Cross-Q. 286. You don't remember his words, do you?

A. You have his words there.

Cross-Q. 287. Is that the best answer you can make to my question?

A. That is the best answer.

Cross-Q. 288. Is not this the fact: That he asked you if you did not remember having some logs cut, and his telling you that they were too small for pipes, and that when they were bored there would be nothing but the sap left, and advising you to use them for some other purpose and to get out larger logs; was not that Mr. Draper's question to you, in substance?

A. That was what he said; but was there any logs there, cut, I want to know? I think I've got a right to know.

Cross-Q. 289. Mr. Draper asked you if you did not remember about that, did he not?

A. Mr. Draper asked me whether I knew that I cut a lot of timber; that was the language he used—whether I knew.

Cross-Q. 290. And because Mr. Draper asked you that very fair and proper question you felt yourself justified in coming here and representing to the Court, under oath, that at that visit they wanted to make you say things that would have perjured you, did you?

A. Well, they did say things that wasn't so, and what more can I do than say that they tried to persuade me.

Cross-Q. 291. In your cross-answer 173, when referring to the visits of Mr. Jacobs, Mr. Drawbaugh and others to see you, before the Easton interview, you state that they wanted to make you believe things that never was. Name anything and everything that they wanted to make you believe, that never was.

[*Same objection.*]

A. This of Mr. Jacobs and Mr. Drawbaugh ain't included in this that never was.

Cross-Q. 292. You say that somebody wanted to make you believe things that never was; who is it that wanted to make you believe those things that never was?

[*Same objection.*]

A. Mr. Draper.

Cross-Q. 293. You refer to the interview at Easton about two weeks ago, do you?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 294. How many different times did you go to Philadelphia this present spring while the Bell Telephone Company was taking testimony there in this case?

A. I was twice there. Whether it was in session when I was there the first time I don't recollect. It had just commenced then. I was one day there I don't think it had commenced.

Cross-Q. 295. You went up there, then, at the request of the Bell Telephone Company, did you?

A. Yes, sir.

Cross-Q. 296. Did you see Captain Thomas Draper's son, John Draper, at Philadelphia on either of your visits there this spring?

A. No, sir.

Cross-Q. 297. You have referred, in this deposition, to some old flue-pipes which you had your mind on at one time; when was it that you were thinking of getting flue-pipes?

A. About the time I wrote to Draper.

Cross-Q. 298. Those flue-pipes were locomotive-boiler flue-pipes, were they?

A. Yes, sir.

Cross-Q. 299. Did you examine any to see whether they would answer your purpose?

A. Yes; I looked at some.

Cross-Q. 300. Where did you look at them, and whose were they?

A. Why, I looked at some in the round-house.

Cross-Q. 301. Was that all you looked at?

A. I might have looked at some other different places, but there was a great pile of them in the round-house—some old, and some new.

Cross-Q. 302. Why didn't you get them, and use them?

A. I had no orders.

Cross-Q. 303. Did you ever look around for any flue-pipes at any other time?

A. Yes, sir.

Cross-Q. 304. When, and for what?

A. I looked afterwards, when we were about putting in the ram, for some old pipe—two-inch pipe.

Cross-Q. 305. Where did you look for flue-pipes at that time?

A. At Oliver Miller's.

Cross-Q. 306. Oliver H. Miller's, the constable's, at Marysville?

A. Yes, sir; I don't think he was constable then.

Cross-Q. 307. Did you see any flue-pipes at Mr. Miller's?

A. I saw some there.

Cross-Q. 308. Do you know how he happened to have flue-pipes, or what he had them for?

A. No, sir, I do not, that I recollect of.

Cross-Q. 309. How many flue-pipes did you see at his place, and where were they?

A. There were two or three, I think, standing up against the stable.

Cross-Q. 310. Did you tell him what you wanted them for?

A. Well, I don't recollect; I think I must have said something about the ram.

Cross-Q. 311. How long was that before you put in the ram?

A. It was before I went to Harrisburg to look after pipe.

Cross-Q. 312. How long was it before you put in the ram?

A. I can't tell you that.

Cross-Q. 313. It was before you put in the ram, was it?

A. Yes, sir.

Cross-Q. 314. Why didn't you get those pipes and use them, instead of going to Harrisburg?

A. I calculated they wouldn't answer the purpose.

Cross-Q. 315. Why wouldn't they answer the purpose?

A. Because they were some of them bent and eat up pretty well with the rust.

Cross-Q. 316. As they were flue-pipes, I suppose they were made of very thin metal, were they not?

A. They were made of pretty thick metal.

Cross-Q. 317. How thick?

A. I never measured them.

Cross-Q. 318. How large were those flue-pipes that you saw at Mr. Miller's—how long, and of what diameter?

A. I never measured them—how long; I suppose about two inches in diameter; I never measured them.

Cross-Q. 319. You have stated that at one time there was some talk about taking the water from the upper spring, down the hill and part way up the other hill, by means of pipes; did you ever procure any pipes for that purpose?

A. No, sir.

Cross-Q. 320. Did you ever bore any pipes for that purpose?

A. No, sir.

Cross-Q. 321. Did you ever have any pipes bored by others for that purpose?

A. No, sir.

Cross-Q. 322. Did you ever cut or procure any logs to be bored for that purpose?

A. No, sir.

Cross-Q. 323. Did you ever dig any trench to put pipes in for that purpose?

A. No, sir.

Cross-Q. 324. Did you ever cause any trench to be dug, in whole or in part, to put pipes in for that purpose?

A. No, sir.

Cross-Q. 325. Did you ever commence to dig the spring, or to dig any place higher up for the spring, for that purpose?

A. No, sir; I did not.

Cross-Q. 326. There never was a stroke of work done towards the conveying of water from the upper spring by pipes towards the house, was there?

A. No, sir.

Re-direct by Mr. Storrow:

Q. Q. 327. During your cross-examination you said that you had not forgotten the letter which you wrote to Mr. Jacobs; before that letter was shown you on your cross-examination did you remember what there was written in it?

[*Objected to as leading and as endeavoring to get the witness to substantially change his testimony.*]

A. I hadn't forgot the letter, but I had forgot the subject that was written inside of it. I recollected the account—that I sent him the account.

Q. Q. 328. What house did you live in at Marysville just before you moved to Eberly's Mills?

[*Objected to as new matter, not referred to on the cross-examination.*]

A. I think it was old Mr. Kipple's house, along the river.

Re-cross-examination by Mr. Hill, de bene esse:

Re-cross-Q. 329. When you farmed the Draper farm before you moved to Milltown did you ever live on the farm?

A. Yes, sir.

Re-cross-Q. 330. What house did you live in on the farm?

A. I lived in the old log house the first year.

Re-cross-Q. 331. And then you lived in the new stone house, did you?

A. Yes, sir.

Re-re-direct by Mr. Storrow:

Q. Q. 332. Who lived in the stone house the last year before you moved to Milltown?

[*Same objection as to 328th interrogatory, re-direct.*]

A. David Sloop rented it after I left. I think his name was Sloop—a butcher.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me this 19th
day of June, 1884.

FRED. M. OTT,
Examiner.

GEO. KISSINGER.

THEODROE C. IVES, *being produced and sworn, upon examination, saith:*

I live in Harrisburg, Pennsylvania; am twenty-six years old; am a civil engineer.

Examined by Mr. Howson:

Q. 1. What, if any, engineering work are you at present in charge of?

A. I am in charge of the construction of the Susquehanna bridge of the South Pennsylvania railroad.

Q. 2. Have you or not recently, at the request of the counsel in this case, visited a farm situated near the village of Marysville, Perry county, and known as "The Draper Farm," for the purpose of surveying said farm, or any part thereof? If yes, please say when it was that you made that visit and survey, if you made one.

[Objected to as incompetent at this stage of the case, immaterial, irrelevant, and as calling for evidence not in reply to any evidence offered by defendants in their sur-rejoinder; and furthermore, any examination of this witness in regard to surveys objected to because his qualifications have not yet been shown.]

A. I did, on Sunday, June 8th, 1884.

Q. 3. Did you or not, on that occasion, determine by measurement the location of the various buildings, fences, and springs situated upon that part of the farm in the immediate vicinity and to the rear of the dwelling house?

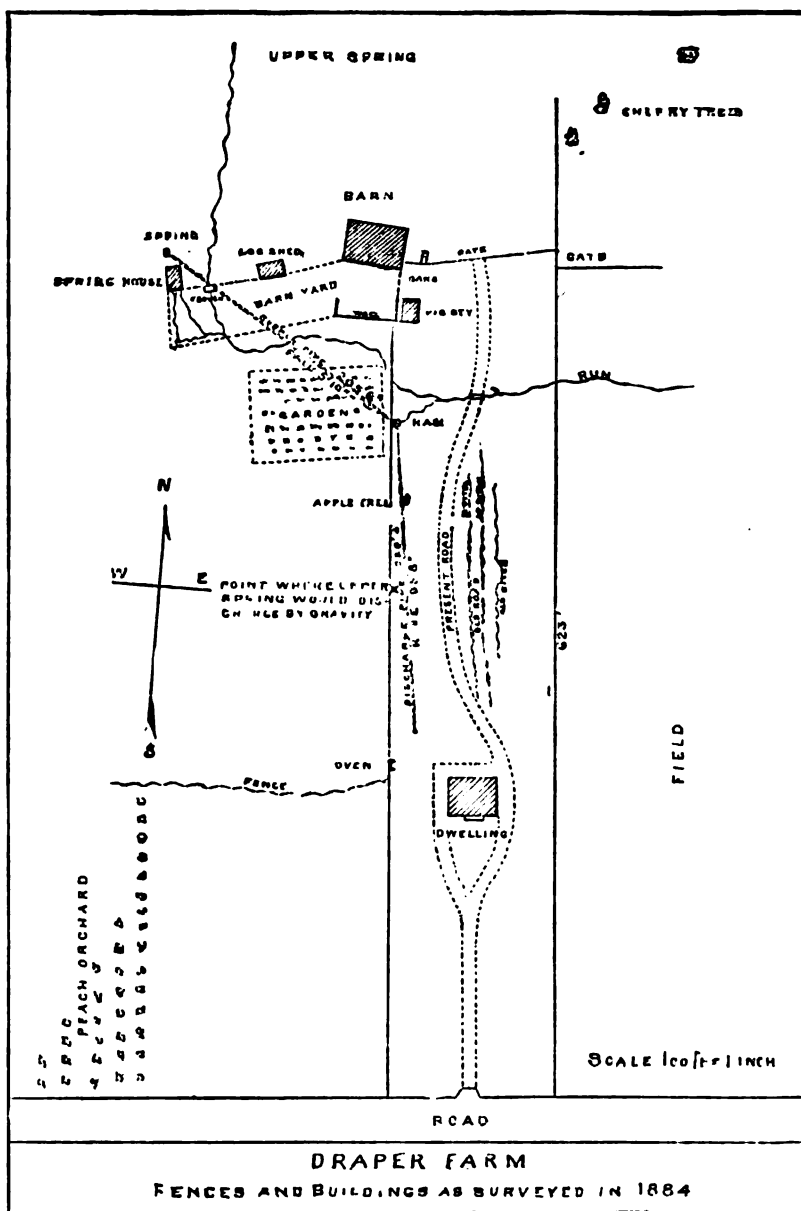
[Former objection repeated; to apply to all further questions in the same line of examination.]

A. I did.

Q. 4. If you have with you a plan or plot, made by yourself, of the premises, from your measurements and observations on that occasion, please produce it.

A. *[Witness produces plan which is offered in evidence, and marked "Complainants' Exhibit, Ives Survey—Draper Farm."]*

The plan is as follows :



The Examiner notes, that the original exhibit, "Ives' Survey—Draper Farm," is $5\frac{1}{2} \times 9\frac{1}{2}$ inches in size, and that the above photo-engraving was reduced in order to conveniently print it on one page. According to the calculation made by Mr. Ives, at the request of the Examiner, the reduction in size has changed the scale from 100 feet=1 inch to 141 $\frac{1}{2}$ feet=1 inch, as near as can be estimated.

Plan objected to as incompetent, and for other reasons noted in objections to Q. No. 2.]

Q. 5. When, and where did you make this plan or plot?

A. On the evenings of June 9th and 10th, at what is known as the Central office of the South Pennsylvania Railroad, corner of Market and Fifth streets, Harrisburg.

Q. 6 Have you or not visited this same Draper farm since making this survey; and if yes, how often, and when?

A. I have; on Friday of the same week—I don't recollect the date—and also on Monday, the week following.

Q. 7. I note on the plot which you have produced the representation of a trough to the right of the spring-house; when you were there, did you or not note whether this trough was supplied with water; and if yes, from what source the supply came?

[Objected to as incompetent at this stage of the case.]

A. I noticed a trough in the barn-yard, to the right of the spring-house, looking from the dwelling toward the spring-house, which seemed to be well supplied with water, this water coming from a spring some one hundred and eighty feet, or thereabouts, due north from the trough.

[Answer objected to as showing guess-work and not measurement.]

Q. 8. If you located by measurement the spring referred to in your last answer, and it is indicated upon your plot, please point it out, and say how you have there indicated it.

A. I did locate spring referred to by measurement, and have indicated it on the plot by a small dot, with the words "Upper Spring" written close to it.

Q. 9. Did you or not make observations and measurements to determine at what point, nearest to the dwelling-house, water could be delivered from this upper spring by gravity? If yes, please state the result of your observations and measurements on this subject, referring, if you please, to any marks upon the plot which you have produced, setting forth that result.

A. I made the described measurements and observations and discovered that along the line of the west fence of the dwelling inclosure, and at a point one hundred and forty-five feet from the north-west corner of the dwelling, water would discharge itself by gravity, if conducted from the upper spring. This point I have designated on the plot

by a black star, and the inscription, "Point where upper spring would discharge by gravity."

Recess until 2.30, P. M.

2, P. M.

Examination of the witness resumed.

Present, same counsel.

Q. 10. I see the word "ram" upon this plot of yours; what is that intended to indicate?

A. The location of a pit in which there was situated at the time of survey, a mechanism, apparently out of use, known as a water-ram.

Q. 11. Did you or not take occasion to notice particularly this water-ram, and the pipes connected therewith?

A. I took particular notice of it.

Q. 12. I notice upon your plot two sets of dotted lines—one set drawn from the ram pit and extending to a point indicated as "spring," near by "spring-house," the other set extending in a line from the ram pit towards the road and terminating at a point to the rear of the dwelling; please tell us what these lines refer to, and how you obtained the data upon which you based that portion of the plot?

A. These lines refer, respectively, to the supply pipe to the ram and to the pipe conducting the discharge from the ram to the point at rear of building mentioned—in the first case, the end of the pipe in the spring was visible, and the other end, in the ram pit, was also visible, a direct measurement was made between these points; in the second case, the end of the pipe in the ram pit was visible, also the other end of pipe, at rear of dwelling, between these points a measurement was made directly upon the ground.

Q. 13. I also notice upon this plot that you have drawn a series of irregular and open lines near the curved lines, labeled "present road," and that these irregular and broken lines are labeled "old road" and "old ditch," the words "old ditch" being thrice repeated; will you please tell us what observations, made by you upon the spot, these lines and phrases are intended to represent?

A. They represent, as stated by their labels, in the first place, two parallel ditches—evidently having been excavated for some time, and having been subsequently filled with broken stone; these two ditches lie nearest to the dotted lines representing "present road;" from the fact

that they were a direct continuation of the "present road" from the point where it leaves the dwelling to a point where it crosses the run, the "present road" now being curved, it seemed evident to me that these ditches were formerly boundaries of the original road. In relation to the third ditch, I would say it is very indefinite, and its object is not apparent. I used the word "ditch" in this last case as collective, for several breaks in the contour of the ground, which were generally in line.

[Answer objected to, because containing mainly the mere opinion of the witness and not evidence.]

Q. 14. You have stated that you visited the Draper farm a second time, on Friday of the same week in which you made this survey. What was the purpose of this second visit?

A. It was in order to locate three large cherry trees standing in a field north-east from the dwelling inclosure, and which now appear on plot, marked "cherry trees."

Q. 15. Referring now to that portion of the farm which is situated, as shown on your plan, between the barn on the west, and a rail-fence on the east, another rail-fence on the north, and the run or stream which passes across the lot, and which, or part of which, appears also in photograph "Exhibit Kissinger Place No. 1," say whether or not you have recently made any observations for the purpose of determining whether that part of the premises is visible from a point or points on the road passing in front of the premises shown in your plot. If yes, say when and how you made these observations, and the result of them.

[Objected to as incompetent and not calling for evidence in reply to anything offered by defendants in their sur-rejoinder. Furthermore, as assuming that the photographs show the part of the premises mentioned. This objection to apply to all subsequent questions in the same line of examination.]

A. On Monday afternoon last I observed, in passing along the road mentioned, a very considerable portion of the locality mentioned; I observed this both from the seat of a buggy and also standing upon my feet in the center of said road.

Q. 16. When making your observations from the buggy, were you, or were you not seated in the buggy?

A. Most of the time I was seated. I rose once or twice while the buggy was standing still, but while in motion remained seated.

Q. 17. You say you particularly noticed the water-ram on the farm and the pipes connected therewith ; please say whether or not you saw any pipe connected therewith having a cap or nut, and which pipe it would be either necessary or useful to hold by means of a common wrench to prevent it from turning while unscrewing said cap or nut ?

[*Objected to as immaterial.*]

A. I saw no pipe which could be grasped by an ordinary wrench in a manner to assist in the operation of unscrewing the mentioned cap or nut.

Q. 18. You have presented the plot "Complainants' Exhibit Ives Survey Draper Farm" as a plan showing the relative localities of the fences, buildings, etc., on a portion of the Draper farm ; please tell us how long it has been a part of your business to make surveys and plans, to determine and show the localities and elevations of objects, and specify some of the enterprises with which you have been connected, and requiring you to attend to or supervise that kind of work.

[*Counsel for defendants objects to this post-mortem attempt to show the qualifications of this witness and to lay foundation for examination upon the subjects upon which he has been called to testify, and here enters a further objection to the plan introduced, because, as appears from the witness' deposition itself, and from the mass of evidence already introduced in this case, the same is partially incomplete and inaccurate in its representations.*]

A. I have been practicing the profession of civil engineer for about seven years ; during this time I was employed on the Elevated railroad of New York city, where, in many cases, I performed the duties mentioned in the question ; as also while holding the position of engineer-in-charge of the Norfolk Division of the Elizabeth City and Norfolk railroad, twenty miles of which was built under my supervision ; the same while I was in charge of the construction of foundations for the Albany and Greenbush bridge across the Hudson river, at which time was surveyed and plotted a large section of Albany city ; the same during the time of my employment on the South Pennsylvania railroad, over two years and a half, when most extensive surveys have been made through the southern counties of Pennsylvania, west of Harrisburg.

Q. 19. Will you please take your pen and indicate on the plan "Complts' Exhibit Ives Survey Draper Farm," by letters, the points of the compass ?

A. [Witness does so.]

[*Entire deposition objected to for reasons above given.*]

Cross-examination by Mr. Church, de bene esse :

Cross-Q. 20. But a part of the upper portion of that locality on the farm described in Q. No. 15 is shown in the photograph "Exhibit Kissinger Place No. 1;" is that not a fact?

A. Yes; but a part.

Cross-Q. 21. It is in evidence in this case that there is a row of trees running along the eastern fence of the inclosure in which the dwelling-house is located; state whether or not you noticed such row of trees; and if so, where does it begin and end, and what kind of trees are in it?

[*Objected to as not cross-examination, and as altogether immaterial.*]

A. I did notice the trees mentioned, but not particularly, as I was not called upon to incorporate them in the draft; from my recollection, they commence at the road south of the dwelling, and extend to a point somewhere between the dwelling and the run; they seemed to be alternately apple and cherry trees, as nearly as I can recollect.

Cross-Q. 22. Will you please locate that line of trees on your plan?

A. That I cannot do without making the necessary measurements.

Cross-Q. 23. I further notice on your plan a figure opposite which is placed the word "oven;" did you see any oven on that farm, located at the place indicated, or any other place?

A. I saw, at the place indicated upon the plot, stones laid up into a wall, and of the shape which indicated to my eye that what I perceived was the ruins of an oven.

Cross-Q. 24. Did anyone tell you it was an oven, or the ruins of an oven?

A. I was so informed. During my work in that locality the fact of the pile of stones mentioned being an old oven was spoken of several times and by several parties; in what order I do not remember.

Cross-Q. 25. Who accompanied you up there to make that survey that Sunday?

A. I took with me two of my assistants on the bridge work.

Cross-Q. 26. Did not Mr. Storrow accompany you?

A. No.

Cross-Q. 27. Was he not there on the place with you?

A. I saw Mr. Storrow there as soon as I arrived.

Cross-Q. 28. Did he tell you what he wished shown on the plan?

A. He told me he desired me to make a survey of fences, buildings, etc., within the bounds shown by the draft. In answer to my question of how particular he desired that I should be as to detail, he replied that I need not locate all the trees and many minor objects presenting themselves to the eye, but that he desired that I should carefully show the location of the ram, the spring by the spring-house, the barn, with buildings adjoining, the dwellings; one apple-tree, a short distance south of the ram; also a spring up on the hill, back of the barn; the point of discharge from the ram, the point where upper spring would discharge by gravity; and this was the substance of his instructions relative to the survey.

Cross-Q. 29. Who told you to indicate those three cherry-trees which are in the field to the right of the inclosure in which the barn stands?

A. Subsequent—several days—to my first instructions, Mr. Storrow asked me to obtain such information as would enable me to incorporate them in the plot.

Cross-Q. 30. Same question as to the "peach orchard."

A. If I remember right, Mr. Storrow mentioned the peach orchard in the first instructions, with probably several other minor points which I do not now remember.

Cross-Q. 31. I notice at the right-hand lower corner of the plan the following: "Scale 100 feet=1 inch." Will you please state whether or not the distances between the various objects noted on your plan are computed with reference to that scale?

A. They are.

Cross-Q. 32. Are the cherry trees, indicated in the right-hand upper corner, located as to surrounding objects indicated on the plan with reference to that scale?

A. They are.

Cross-Q. 33. Did you measure the distance from those cherry trees, or either of them, to any object on the farm; and if so, to what object?

A. I did. The method I adopted in their location was by taking the prolongation of the east fence of the dwelling inclosure as a base, and measuring along this base from the north-eastern corner of the dwelling inclosure to points opposite and at right angles to the three cherry trees respectively; thence from these points, and at right angles to the produced line, directly to the trees themselves.

Cross-Q. 34. You have referred to what you term "ditches" on the

hill-side between the house and the run. How deep do those ditches at present appear to be?

A. Their appearance at present is little more than a sharp break in contour of the hill-side, as they have been filled with stone.

Cross-Q. 35. The places which you term "ditches" have the appearance of being the course of the water shed by a portion of the hill during rains, have they not?

A. Well, not particularly, as they are pretty well grown up with grass. There would naturally flow more water down a slight depression of the kind described than on the perfectly smooth face of a hill.

Cross-Q. 36. Were those depressions pointed out to you by Mr. Storrow?

A. They were; but he did not tell me to accurately locate them—simply to indicate that ditches were in that place.

Cross-Q. 37. They appear to be indicated quite prominently in your plan. Are they, as a matter of fact, prominent landmarks?

A. I should not say they were.

Cross-Q. 38. When you were making your observations from the road which runs past the Kissinger house, with a view to determining how much of that inclosure by the barr, before referred to, you could see, did you find that, at the point from which the two photographs offered in evidence were respectively taken, the most favorable views of that inclosure could be obtained?

[*Objected to as not cross-examination, as immaterial, and as assuming what has not as yet been made to appear—that the witness was present when those photographs were taken, or has personal knowledge of the points from which they were taken.*]

A. Not being present when the photographs were taken, and, therefore, not knowing the exact location of these points, I cannot say.

Re-direct examination by Mr. Howson:

Q. Q. 39. If, in making the observations referred to in the last cross-question, you noted from what distance down the road you could see the part of the premises alluded to, and to what distance beyond that point you continued to see that part of the premises while riding in your buggy, please give us the result of these observations.

A. I first caught sight of the locality mentioned on a rise in the road which, I should judge, was about eleven hundred and fifty feet from the gate opening into the carriage-way to dwelling. The view pre-

sented at that point was about like that of "Exhibit Kissinger Place No. 2;" the locality mentioned was visible then for about a hundred and fifty feet; thence it was obscured by tall grass in field adjoining road for about one hundred and fifty feet; thence it was visible more or less, varying in quantity with the exact contour of the field adjoining road, to a point about four hundred feet east of the before-mentioned gate.

Q. Q. 40. Referring now to your observations as to the visibility of the part of the premises alluded to from the road while you were afoot, can you tell us how far down the road from the gate, and for about what distance on the road, you noticed that you could see that part of the premises while you were afoot?

A. The point at which I made my observation, standing in the center of the road, I should say was about six hundred feet east from the gate mentioned.

[Answer objected to, as the distance appears to have been estimated, not measured.]

Deposition taken and reduced to
writing by me, and by the witness
sworn to and subscribed in my
presence this 18th day of June, A.
D. 1884.

PAUL CHARLTON,
Notary Public, Special Examiner.

THEO. C. IVES.

JUNE 19, 1884, 10.40, A M.

Resumed pursuant to adjournment.

Present, Mr. Howson for complainants, Mr. Church for respondents.

DAVID COWENS, *being produced and sworn, upon examination saith:*

Examined by Mr. Howson:

Q. 1. You are the same David Cowens who has heretofore testified in this case, (see respondents' sur-rebuttal, p. 695, and complainants' rejoinder, p. 2148), are you not?

A. Yes, sir.

Q. 2. You are acquainted with Mr. Thomas Draper, who formerly owned what has been referred to herein as the Draper farm, near Marysville; and were acquainted with him while he owned that farm and Mr. George W. Kissinger occupied it?

[At this point counsel for defendants calls the attention of the Court to the fact that the complainants have already examined more than the ten witnesses which they limited themselves to by their stipulation of last Friday, 13th of June, 1884, and spread upon the record (respondents' sur-rejoinder record, p. 249;) and counsel for defendants objects to the complainants proceeding with the examination of this witness, and of any other witness or witnesses, unless they shall apply for and obtain the order of the Court for permission so to do; and they hereby notify complainants that they shall move at the proper time to strike out the deposition of this witness, if proceeded with, and the deposition or depositions of any witness or witnesses that may follow him, on the ground that the same are taken without any authority whatever, and in direct violation of their said stipulation.]

A. Yes, sir; I was.

Q. 3. It has appeared in evidence in the case that at one time there was a hydraulic ram on this farm while it was being occupied by Mr. Kissinger, and while Mr. Kissinger lived on that farm; did you or not ever hear or take part in any talk or discussion as to any other way of getting water up to or towards the house through pipes; and if yes, what was that talk or discussion and who were the parties present at the time?

[Objected to as not proper testimony in rebuttal and as not competent at this stage of the case.]

A. Yes, we had a talk about it. I was down to Mr. Kissinger's and Mr. Draper was there. He and Mr. Draper told me that he thought he could convey the water from the upper spring in pipes that would run half way up the other hill towards the house. I told him that I thought that spring would go dry in dry weather; he thought not, by digging it out—digging it deeper—that's about the discourse we had.

Q. 4. About when was it, to the best of your recollection, that you and Messrs. Draper and Kissinger had this talk?

[Same objection.]

A. Well, I have no date for it, but I think it was in the year 1875.

[Objected to as mere guess-work, not evidence.]

Q. 5. Whereabouts on the premises, if you recollect, was it that this talk occurred?

[Same objection, the objection to apply to all succeeding questions in the same line of examination.]

A. It was in front of the barn.

Q. 6. Were you or not present with Mr. Brooks, the gentleman here present, and the photographer, when, on Tuesday of this week, pictures were being taken of portions of the Draper farm from points along the valley road?

[*Objected to as incompetent and immaterial at this stage of the case, and not in rebuttal of any evidence offered by defendants in this case; further objected to as leading.*]

A. I was present; yes.

Q. 7. It has appeared in evidence that said pictures were taken from a wagon; say, if you please, what kind of a wagon, and, if you know, whose wagon it was.

[*Same objection, to apply to all succeeding questions in the same line of examination.*]

A. It's an iron-axle wagon—strong wagon—belongs to me.

Q. 8. Mr. Robert O. Moore, who testified in this case the other day, is your son-in-law, is he not?

A. Yes, sir.

Q. 9. Did he or not live with you at one time; and, if yes, during what period of time?

A. He did live with me two years, and a couple of months over two years—two months, I think. He come there in February, 1878.

Q. 10. Do you or not remember his hauling stone for Jesse Wagner during the time he was so living with you?

[*Objected to as incompetent at this stage of the case.*]

A. I do; he did haul stone for Wagner.

Q. 11. If you know, please tell us what wagon your son used for that hauling.

[*Same objection.*]

A. He used the same wagon we used this week, the best part of the time. Yes, he broke a tire on it one day and used another wagon till he got that fixed.

Q. 12. You say "the same wagon we used this week;" by that do you or not refer to the wagon from which the pictures were taken?

A. Yes, sir.

Q. 13. You say you were present while these pictures were being taken; if you know, please tell us at what height above the bed of the

wagon the eye or the lens of the camera was adjusted for the purpose of taking these pictures.

A. Well, I suppose it was some five feet, I guess, above the bed of the wagon. A common man just standing could comfortably look into it. Mr. Brooks stood up on it and looked in. If you could measure Mr. Brooks you could tell; he just stood up and looked.

[Objected to as mere guess-work, not evidence.]

Q. 14. How far down the valley road from the front of the Draper farm was the point from which the first of these pictures was taken?

A. Well, I suppose it was about a hundred yards below the house towards Marysville.

Q. 15. Same question as to the point from which the second picture was taken.

A. Well, they were about two hundred yards apart, from where we took the first to the second—or rather a little over, I guess. We stepped it—me and Mr. Brooks stepped it—near about two hundred yards; then we moved the wagon a little further, still, to get a better sight.

[Objected to as mere guess-work.]

Q. 16. It appears from your testimony given here last fall, (see defendants' sur-rebutal, p. 696,) that at one time you visited Mr. Kissinger's place and saw him boring some wooden pipe; whereabouts on the premises was it that you saw that?

[Objected to as immaterial and clearly incompetent at this stage of the case, and as calling for evidence not in rebuttal; this objection to apply to all questions in the same line of examination.]

A. Right between the tree—a walnut tree, I think it is—and the hog-pen.

Q. 17. What direction from the barn?

A. Towards Marysville from the barn.

Q. 18. While the pictures were being taken the other day, did you and Mr. Brooks walk, or ride from the point where the first picture was taken to the point where the second was taken?

A. We walked.

Q. 19. While so walking from one point to the other, did you or not take occasion to observe whether or not as you walked along the road that part of the farm on which you had seen Mr. Kissinger boring those logs could be seen from the road; and if yes, what were your observations on this subject?

A. I looked every—perhaps every fifteen steps I looked over to see whether I could see Mr. Beers—he was standing there at the place; I could see him, with the exceptions of a couple times that I looked, all the way.

Q. 20. It has appeared from your testimony in this case that you have occupied a farm in Rye township adjoining the borough of Marysville for more than forty-one years; during those years have you not walked and ridden, and driven many hundreds of times along the valley road past this Draper farm?

[*Objected to as leading.*]

A. Yes, sir; hundreds of times.

Q. 21. Having had this experience, and having made on Tuesday last the special observations to which you have testified, please tell us whether or not a person either driving or walking along this valley road can see from that road as he goes along that part of the farm upon which you saw Mr. Kissinger boring those wooden logs?

A. Well, driving you can see it, I guess, all the way; walking, some raises in the field alongside the road might hinder you for a few steps.

Q. 22. At this season of the year the trees are in leaf and the grass grown; how was it, if you remember, at the time when you saw Mr. Kissinger boring these wooden pipe or logs?

A. I think it was in the spring of the year.

Q. 23. Before, or after the trees were in full leaf, according to your present recollection?

A. I think it was before.

Q. 24. Reference has heretofore been made in your former testimony to a visit which Mr. Kissinger and yourself made to Milltown, Cumberland county, to Mr. Daniel Drawbaugh's shop there; what, if anything, did Mr. Kissinger bring back with him from Milltown on that occasion?

[*Objected to as no reference has been made to such subject in the testimony given by the witness at this time, though the question is so skillfully worded as to mislead the Court in regard to that fact; and further objected to because the witness was examined and cross-examined on that subject when called by the defendants, but was not interrogated about it when called by the complainants at Philadelphia during the taking of their testimony in rejoinder—why, counsel for defendants cannot imagine, unless, to use the language of the witness Keller examined a day or two ago, he had not at that time become "fully convinced" that there was any error in*

his first testimony given for defendants in regard to the said visit to Milltown with Mr. Kissinger.

The Examiner is requested to certify that, after the above question was put, and while objection was being made to it, counsel for complainants changed the question by inserting the word "former" between "your" and "testimony."

The Examiner certifies that the word "former" was inserted in the question after counsel for defendants had begun his objection and before the question had been put to the witness.

Complainants call the attention of the Court to the fact that the subject now being inquired of was first introduced at this stage of the case by defendants themselves in their cross-examination of the witness Swartz, (see cross-question No. 39 in said examination,) and that having thus themselves irregularly introduced the subject it does not lie in their mouths to object to complainants making inquiries now upon the same subject.]

A. He brought some seed-potatoes back; that was the object of the visit—to get his potatoes.

Recess until 2, P. M., to-day.

2, P. M.

Examination of the witness resumed.

Q. 25. When you were testifying on the part of the respondents last winter, you were examined in reference to having seen and listened at something referred to in your examination as a "talking-machine" at the time you visited Mr. Drawbaugh's shop with Mr. Kissinger; will you please tell us what this thing at which you listened on that occasion was, as you now recollect it?

[Objected to as not in rebuttal of any evidence offered by defendants in sur-rejoinder, and as not competent in any view at this stage of the case.]

A. I didn't see the machine; I heard it; there were holes through the wall where I listened. Drawbaugh was in the other room; he talked through it; I don't know what it was like.

Q. 26. On that occasion did or did not Mr. Drawbaugh explain any talking-machine to you, or say anything to you about talking by electricity?

[Same objection.]

A. He did not.

Q. 27. After you had given your testimony for the defendants last

winter, and while you were still in town here, did or did not any of defendants' counsel show you anything stated to be a talking-machine, and ask you whether or not you had ever seen it before; and if yes, what was your reply?

[*Same objection, and as immaterial.*]

A. Well, they showed me one—Mr. Jacobs in his office; they called it a talking-machine, and asked me if I had ever saw it before; I told them I hadn't.

[*Entire deposition objected to as immaterial, not in rebuttal, and incompetent at this stage of the case.*]

Cross-examination by Mr. Church, de bene esse:

Cross-Q. 28. Mr. Cowens, when you were down at Philadelphia last month to give testimony for the complainants in this case, how long were you there?

A. I was six days there.

Cross-Q. 29. From Philadelphia where did you go, and who, if any one, went with you?

A. Mr. Kissinger and me went together down to his place.

Cross-Q. 30. Did any one else go with you?

A. No, not from Philadelphia.

Cross-Q. 31. Did any one beside Mr. Kissinger ask you to go down to Easton on that occasion?

A. Well, Mr. Kissinger wanted me to go along to see where he lived, and his wife wanted to go along up to Marysville to see her daughter, and this would be a good chance for her to go along up with me.

Cross-Q. 32. Question repeated.

[*Repetition objected to, the question having been fairly and fully answered.*]

A. Mr. Brooks thought it would be a good chance. I wanted to go and see Mr. Swartz; I hadn't been there since he bought the new place. Mr. Brooks said that if I wanted to go around that way he'd pay my way; it would cost a little more to go around that way, but if I wanted to go and see Swartz he wouldn't mind having me go that way.

Cross-Q. 33. He also wanted to have you talk with Swartz, and see if he hadn't also been mistaken about his testimony on this ram matter, didn't he?

A. Yes.

Cross-Q. 34. Whom did you stop with down at Easton?

A. I stopped with Kissinger first—got my supper there—then Kissinger took me to Swartz's—there I stayed all night.

Cross-Q. 35. Did Kissinger stay there too, or go home?

A. No; he went home.

Cross-Q. 36. How long did you remain at Mr. Swartz's?

A. Till the next evening.

Cross-Q. 37. What was the point in Mr. Swartz's testimony about which Mr. Brooks said he thought he was mistaken?

A. I don't exactly know; Mr. Swartz's testimony is something similar to mine here; I think we come pretty near together. That was last winter; then, I found I was mistaken, and I told Mr. Swartz that I thought he was; after we talked awhile over the matter, why, he thought he was mistaken, too.

Cross-Q. 38. Did you tell him that Mr. Brooks had sent you down there to see whether or not he had been mistaken, too?

A. I think I did.

Cross-Q. 39. During the day that you spent at Mr. Swartz's, did you see Mr. Kissinger again?

A. No; I didn't see him till in the evening—he brought his wife in.

Cross-Q. 40. Did Mr. Swartz leave with you when you left?

A. No; he left the next morning after I come in the evening—he left in the morning.

Cross-Q. 41. Did you see any one connected with the Bell Telephone Company while you were there at Easton upon the occasion of that visit?

A. I did not.

Cross-Q. 42. Was money given to Mr. Swartz to pay his expenses up to Philadelphia?

A. Not that I know of.

Cross-Q. 43. Which way did you go home from Easton?

A. Went by Baltimore.

Cross-Q. 44. How many days in all, not including Sundays, were you away from home on that trip?

A. I think I was eight days away.

Cross-Q. 45. How much money in all were you paid by the Bell Telephone Company?

A. I guess, forty-five dollars past my expenses. They bore my expenses down to Philadelphia. I believe it was forty-five, and then they paid my fare around.

Cross-Q. 46. How much did they give you for expenses?

A. Just what it cost me.

Cross-Q. 47. Then, as I understand you, they paid you at the rate of five dollars a day while you were away from home, including the time you were visiting at Easton; is that a fact?

A. I think they paid me at the rate of five dollars a day and expenses. I was only one day at Easton; I couldn't get away any sooner. I took the boat in the evening I come one evening and left the next.

Cross-Q. 48. You got away from Easton, then, just as soon as you could after having a talk with Mr. Swartz about this ram matter, didn't you?

A. Yes; on the first boat after, that went out.

Cross-Q. 49. Mrs. Kissinger's expenses were also paid by the Bell Company, were they not?

A. I don't know; they—she gave me the money to get her ticket and I got it for her. She didn't tell me the Bell Company gave it to her.

Cross-Q. 50. Do you know what they paid Mr. Kissinger when he was at Philadelphia?

[Objected to as not cross-examination, immaterial, irrelevant, and not seeking the best evidence.]

A. I don't know. I couldn't tell what they gave Kissinger; I wasn't along when he got his money.

Re-direct examination by Mr. Howson:

Q. Q. 51. Mr. Cowens, what is the size of your farm in Rye township?

[Objected to as immaterial and not proper reëxamination, being based on no matter touched upon in cross-examination.]

Complainants refer to the general character of the cross-examination, and to the fact that this witness was one produced originally by defendants.]

A. It's ninety acres, more or less.

Deposition taken and reduced to
writing by me, and by the witness
sworn to and subscribed in my
presence on this 19th day of June,
1884.

DAVID COWENS.

PAUL CHARLTON,
Notary Public, Special Examiner.

Adjourned to 10, A. M., to-morrow.

JUNE 20, 1884, 10, A. M.

Examination resumed.

Present, same counsel.

Mrs. LOUISA CROUSE, *being produced, sworn, and examined, saith :**Examined by Mr. Storrow:*

[*This deposition objected to by respondents' counsel as in violation of the stipulation and assignment of time agreed upon at the close of respondents' evidence in sur-rejoinder, and as therefore inadmissible.*]

I live in Marysville, Perry county, and have lived there for about nineteen years.

Q. 1. Was your name formerly Mrs. Stotter, and did you at one time carry on a tin-shop at Marysville?

A. Yes, sir.

Q. 2. When did you carry on a tin-shop at Marysville?

A. From June, 1874, until March, 1880.

Q. 3. Will you please produce your day-book from the beginning of your business down through 1878?

[*Objected to as not admissible at this stage of the case, because merely cumulative of complainants' evidence in rejoinder, this objection to apply to all succeeding questions upon the same line of inquiry.*]

Complainants refer to deposition of Joseph W. Rhoads, particularly questions and answers 28 and 29 in respondents' sur-rejoinder, pages 159, 160.]

A. Yes, sir; here it is.

[*Witness produces book.*]

Q. 4. On page 222 of the book you have just produced I find that the page is headed, "Marysville, November 4, 1878," and that one of the entries on that page is as follows:

"George Kissinger.

To Funnell & soldering pipe .75"

In whose handwriting is that entry?

A. It is in my handwriting.

Q. 5. In whose handwriting are the other entries on the page?

A. My own handwriting.

Q. 6. The first item in that charge is "Funnell;" do you remember what that was, and what it was for; and if so, please state?

A. It was made as a screen, shaped something like a funnel, and the

large end was full of holes; it was to be fixed in some way to a pipe, to prevent the leaves and dirt getting in.

Q. 7. Did Mr. Kissinger tell you at that time what that funnel or screen was for; and if so, what was it?

[*Further objected to as calling for hearsay.*]

A. Yes, sir; he said that it was to be used about this pipe as a screen.

Q. 8. Did he tell you what kind of a contrivance it was to be used in connection with?

[*Same objection.*]

A. I don't remember that he did.

Q. 9. The second item in that entry is "Soldering pipe;" what was that job?

A. That was a pipe used for the ram.

Q. 10. Did you see that pipe at your shop, or the work done on it?

A. Yes, sir.

Q. 11. Who did the work on the funnel and the pipe?

A. John Vink.

Q. 12. If you have got any book-entries showing the time when John Vink worked for you in 1878 please point them out.

A. [*Witness produces another account-book and points out the page headed:*

"John M. Vink Thursd y
1878. Commenced to work for me Jan. 17th "

The next page is headed: "J. M. Vink," and the last entry on the next page is:

"Mar 7th, 1879.

Settled up in full to date for work done for me one hundred and thirty-two & a half. \$132.50"]

Q. 13. In whose handwriting are these entries?

A. Mine.

Q. 14. Were they made at or about the time they are dated?

A. Yes, sir.

Q. 15. Was the entry in the day-book about George Kissinger written by you in this book on the day, or was it taken by you from something else, and if so, what did you take it from?

A. From a slate, between the 4th and the 8th—between that date; I copied it from the slate.

Q. 16. Who generally did the writing on the slate that year?

A. When Mr. Vink done jobs like that, he charged on the slate, and I then transferred into the book.

Q. 17. You say that this pipe was for the ram ; was it a new piece of pipe, or an old piece of pipe ?

A. It was a new piece of pipe.

Q. 18. Did Mr. Kissinger at that time inform you whether the ram had just been put in, or whether it had been in for some years ?

[*Further objected to as incompetent, leading, and calling for hearsay.*]

A. He said that it had just been put in very lately.

Q. 19. Had Mr. Vink worked for you at a previous time before he came there in 1878 ; and if so, will you point out your account with him for that previous time ?

A. Yes, sir.

[*Witness points to page 214 in day-book. The first date on the page is "October, 1875 ;" the last date is found in the entry: "Settled up in full to date, August 3, 1876."*]

Q. 20. Will you please produce your ledger, and point out Mr. George Kissinger's account in it ?

A. Yes, sir, I produce it ; it is on page 188.

Cross-examined by Mr. Hill, de bene esse :

Cross-Q. 21. I notice that in your ledger, which you have produced here, the account of George Kissinger, on page 188, commences August 30, 1876 ; where is your ledger account with Mr. Kissinger for the time previous to 1876 ?

A. Right below it in the ledger, on the same page.

[*Witness points.*]

Cross-Q. 22. But those accounts to which you point are accounts of 1878 and 1879, are they not ?

A. Yes, sir ; 1878—November, from the 4th to the 8th—they were charged between those dates in 1878.

Cross-Q. 23. Now I want to know where are your ledger accounts with Mr. Kissinger from the time when you commenced the tin-shop business down to August 30, 1876 ?

A. Why, they are produced right on this page—that is all the work he had did with me.

Cross-Q. 24. According to this page to which you refer, your account with Mr. Kissinger commenced with August 30, 1876, did it not ?

A. Yes, sir ; just as it is charged here in the ledger.

Cross-Q. 25. And the first item charged here is August 30, 1876, is it not?

A. Yes, sir; August 30, 1876.

Cross-Q. 26. You had no book-account with Mr. Kissinger prior to that date, had you?

A. No, sir.

Cross-Q. 27. Was no work done at your shop for Mr. Kissinger prior to August 30, 1876?

A. I don't think there was; if there was, he paid for it in cash, and it wasn't charged.

Cross-Q. 28. Did Mr. Kissinger purchase anything at your shop prior to August 30, 1876?

[Objected to; if the counsel has found any entry in the book relating to Mr. Kissinger, or to any purchase by Mr. Kissinger, which entry he may wish to bring to the attention of the Court or the witness at any time, he must do it now.]

A. I don't really remember that. If he did, he paid for it in cash, and, as I told you before, it wasn't charged.

Cross-Q. 29. Such work and articles as were paid for in cash at the time were not charged on any of your books, were they?

A. No, sir.

Cross-Q. 30. You have produced a ledger here, which lies before you on the table, on page 188 of which appears Mr. Kissinger's ledger-account; when did you commence keeping that ledger as a book of entry, and up to what time did you use it as such?

A. From June, 1874, till March, 1880.

Cross-Q. 31. I want to call your attention to an entry in your day-book, which you have produced here, which entry is dated May 14, 1875, and is as follows:

"George Kissinger, Bottom in coffee-boiler, .15."

A. That is Kreidler's handwriting—a man who worked for me at that time—I have no recollection of that; when he paid cash they were generally not charged.

Cross-Q. 32. You have no recollection of Mr. Kissinger's purchasing at your shop a bottom for a coffee boiler, or having one put in, on May 14, 1875, have you?

A. No, sir; I have not.

Cross-Q. 33. I now call your attention to an entry in your said day-book, dated June 26, 1875, and which entry is as follows:

"Mr. George Kissinger
to 1 qrt measure .20."

You observe that entry also, do you?

A. Yes, sir; those must have been paid right after they were charged or they would have been charged in the ledger. The entry is in my handwriting. You will notice that those dates are not after I opened the ledger-account with him; that is the reason they were not charged in the ledger.

Cross-Q. 34. I now call your attention to another entry in your said day-book, which entry is dated Sept. 9, 1875, and is as follows:

"To bal yet on 1-2 doz gal jars .25."

You observe this entry also, do you?

A. Yes, sir; that is my handwriting. That was not a charge against him; it was the balance he paid me to balance it up.

Cross-Q. 35. You have no recollection of Mr. Kissinger purchasing the quart measure, June 26, 1875, have you?

A. No, sir; he must have paid that soon after it was bought, or I would have had a ledger account opened against him before I did.

Cross-Q. 36. Referring to this entry of Sept. 9, 1875, which you state in answer 34 is not a charge against Mr. Kissinger, but was the balance he paid you to balance it up: do you remember anything about the transaction?

A. No, sir, I don't; but the book states there that it was the balance he paid me; I had the account against him, and then when it was paid I entered it in the day-book.

Cross-Q. 37. I hardly think the book states as you say; the language of the book is "To bal yet on $\frac{1}{2}$ doz gal jars .25;" does that not indicate that he had bought one half dozen gallon jars, and paid you for them all but twenty-five cents, and that you charged that twenty-five cents against him on the day-book?

A. To the best of my knowledge—I don't recollect—but I know he paid me, and I entered it down—what had been the balance. Those charges were all paid before I opened the ledger account, and, of course, they were as cash, or I would have opened the ledger account before; and that is why I didn't remember about them any more.

Cross-Q. 38. In the entry of Sept. 9, 1875, the letters "bal" stand for balance, do they not?

A. Yes, sir.

Cross-Q. 39. And you think that balance was paid on that day, do you?

A. Yes, sir; I think so.

Cross-Q. 40. I suppose you don't know when that half dozen gallon jars were sold to Mr. Kissinger, do you?

A. No, sir; I don't remember.

Cross-Q. 41. You don't know how long they were sold to him before September 9, 1875, do you?

A. No, sir; I don't.

Cross-Q. 42. When did Mr. Kissinger settle and pay up the balance due on the ledger account which you have produced here?

A. According to the date, here is all the settlement that we had, [indicating lower part of page 188;] one side of the page are his credits, and on the other side all the charges.

Cross-Q. 43. The charges against him amount to \$8.15 and the credits in his favor to \$5.56, leaving a balance of \$2.59 due you on the account as shown by the book; is that the fact?

A. To the very best of my knowledge it is.

Cross-Q. 44. And does he still owe you that \$2.59?

A. Yes, sir; just as the book stands there.

Cross-Q. 45. When Mr. Kissinger got the funnel and got the pipe soldered, as referred to in your direct examination, did he personally come and order the work done or make the purchase?

A. I think he came himself first, but sent some one for it.

Cross-Q. 46. Did you have the funnel ready made, or did you make it for him?

A. No, sir; he ordered it as he wanted it, and I made it for him.

Cross-Q. 47. You say you think he came himself first, but sent some one for it; do you mean that he came and ordered the work to be done, and that afterwards, when the work was done, he sent some one to get the articles?

A. Yes, sir.

Cross-Q. 48. Do you remember whom he sent to get the articles?

A. No, sir; I don't remember.

Cross-Q. 49. I suppose those articles were charged on the book at the time when he sent and got them after they were done, were they?

A. Yes, sir.

Cross-Q. 50. About how long was it from the time when he ordered

the work to be done to the time when he sent and got the articles after they were finished?

A. The same day.

Cross-Q. 51. What time of day was his visit to your shop to order the work?

A. As near as I can remember he brought it in the forenoon and sent for it in the afternoon.

Cross-Q. 52. Did he bring to your place the piece of pipe which you soldered for him?

A. As near as I can recollect I think he did.

Cross-Q. 53. What was the size of that piece of pipe?

A. I really don't know what the size of it was, but it was a pretty long piece.

Cross-Q. 54. About how long?

A. I really have no idea.

Cross-Q. 55. Can't you tell whether it was a foot long or longer?

A. Oh, my; it was longer than that.

Cross-Q. 56. Was it ten feet long?

A. Really, I couldn't say it was ten feet long; it may have been between eight or ten feet long; I couldn't state positively the length of it; it may have been longer, but that is as near as I have any idea of.

Cross-Q. 56½. What soldering was done?

A. The pipe was bursted.

Cross-Q. 57. And it was soldered up where it had been bursted, was it?

A. Yes, sir.

Cross-Q. 58. Did he tell you how it had been bursted?

A. By trying the pipe, and frost—it had been frozen, I believe.

Cross-Q. 59. Did he state that it had been tried with the ram and frozen?

A. Yes, sir; to the best of my knowledge he did state that.

Cross-Q. 60. I suppose he did not tell you how long ago it had frozen and bursted, did he?

A. At that time.

Cross-Q. 61. Did he tell you on what day it had frozen and bursted?

A. He didn't mention in particular, more than he said that the weather had changed so, and that it had frosted at that time.

Cross-Q. 62. Did he tell you how long it had been used before it had frozen and bursted?

A. Very shortly; it was almost the trial of it.

Cross-Q. 63. How long before that day had the weather changed?

A. I don't remember that.

Cross-Q. 64. Then he told you that before he came to order the work done the ram had been in and tried, and the pipe had frozen and bursted, if I understand you?

A. The ram was in—yes, and this was a trial when it bursted. They were only trying the ram; it was just new.

Cross-Q. 65. You had a good deal of conversation that day with Mr. Kissinger on the subject, didn't you?

A. Yes, sir; I always like to have an explanation of work when I do it—how they want it done.

Cross-Q. 66. And you had all the conversation with him that forenoon of November 4th that you ever had with him on the subject of that ram and pipe—I mean that you never had any conversation with him afterwards about it; is that the fact?

A. Yes; we did have conversations afterwards about it.

Cross-Q. 67. How long afterwards?

A. Well, not very long.

Cross-Q. 68. What did he say in that conversation which you next had with him afterwards about it?

A. Some part of that testimony.

Cross-Q. 68½. Some part of what testimony?

A. The one which I have just given.

Cross-Q. 69. What part of the testimony which you have just given?

A. In regard to the pipe being bursted and the screen made: we had the conversation over more than once.

Cross-Q. 70. Did he ever, after November 4th, 1878, bring you bursted pipe for you to solder up for him?

A. No, sir.

Cross-Q. 71. The conversation which you have repeated in your testimony here actually took place in the forenoon of November 4th, if I understand you.

A. Yes, sir; according to the book.

Cross-Q. 72. And then afterwards you talked the whole matter over again on a subsequent day?

A. Yes, sir.

Cross-Q. 73. How many times did you talk the matter over with him again after November 4th?

A. I don't remember.

Recess until 2.30, P. M.

Cross-Q. 74. Do you know Mr. Herman J. Eppler?

A. Yes, sir.

Cross-Q. 75. Have you seen a good deal of him this spring?

[*Objected to as immaterial and new matter.*]

A. No, sir; I haven't seen a great deal of him.

Cross-Q. 76. Have you heard him talk any this spring about this case, or about Mr. Kissinger's ram?

[*Same objection.*]

A. No, sir; I never had any conversation with him about it.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me this
20th day of June, 1884.

FRED. M. OTT,
Examiner.

MRS. LOUISA E. CROUSE.

JUNE 20, 1884, 10.30, A. M.

Examination resumed, pursuant to adjournment.

Present, Mr. Howson for complainants and Mr. Church for defendants.

PETER KAFFENBERGER, *being produced and affirmed, upon examination saith:*

Examined by Mr. Howson:

[*This deposition objected to by respondents' counsel as in violation of the stipulation and assignment of the time agreed upon at the close of respondents' evidence in sur-rejoinder, (see respondents' sur-rejoinder, p. 249,) and as therefore inadmissible.*]

I am the same Peter Kaffenberger who testified before in this case for respondents. (See respondents' sur-rebuttal record, p. 914.)

Q. 1. Did you or not at one time sell to Mr. George W. Kissinger, who formerly occupied the Draper farm near Marysville, the body and running-gear of a spring-wagon?

[*Objected to as immaterial and not in reply to any evidence offered by defendants in their sur-rejoinder.*]

A. Yes, sir.

Q. 2. Was this spring-wagon a heavy or a light wagon?

[*Objected to as leading.*]

A. Very light; it was a buggy once.

Q. 3. At the time you sold it to Mr. Kissinger was it a covered, or an open wagon?

A. Open wagon.

Q. 4. If you had used this wagon yourself before selling it to Mr. Kissinger, say about how long you had been using it.

[*Objected to as immaterial.*]

A. I—the family used it from the summer of 1874 till the time I sold the wagon—the spring of 1876—sold the horse.

Q. 5. To whom did you sell the horse in the spring of 1876?

[*Same objection.*]

A. A colored man, name of Johnson.

Q. 6. For how much did you sell the horse to him, and in what manner did he pay for it?

[*Same objection.*]

A. I sold the horse for fifty dollars on a note.

Q. 7. If you have in your possession the note which was given by Mr. Johnson for that horse, please produce it.

A. Witness produces a judgment note, dated March 4, 1876, for fifty dollars, signed "William ^{his} × Johnson, Mary ^{her} × Johnson, which note is offered in evidence and by the Examiner ^{mark} marked "Compls' Exhibit Kaffenberger Note."

[*Objected to as incompetent, irrelevant, and immaterial.*]

Q. 8. Did you sell the wagon to Mr. Kissinger before, or after you sold the horse to Mr. Johnson?

A. After.

Q. 9. About how long after?

A. The day I could not remember, but between two and three months after.

Q. 10. Was the body of this wagon which you sold to Mr. Kissinger a fine or a rough piece of work?

A. The box was kind of rough; half-inch board; three-quarters-of-an-inch board the bottom; the sides was half-inch.

Q. 11. What, if you recollect, was the condition of the wheels at the time you sold that wagon?

A. Two wheels was pretty good yet; the two others was kind of commencing to break down.

Q. 12. Did you or not see this wagon in use by Mr. Kissinger after you had sold it to him? If yes, how long did he continue to use it, to your knowledge?

A. I seen the using it from the time he got it from me till he left—most of the time. He come down there; he had different wheels in it.

Q. 13. While he was using it did he use it as a covered or an open wagon?

A. Open wagon.

Q. 14. Do you remember any other wagon that Mr. Kissinger had while he was at the Draper farm besides this one he got from you?

[*Objected to as immaterial.*]

A. He had one heavy spring-wagon with a top, when he come there.

Q. 15. Was the body of this heavy spring-wagon with a top painted, or unpainted?

A. It was once painted; it was kind of dirty; kind of a dark color.

[*Entire deposition objected to as incompetent, irrelevant, and immaterial, and as taken without authority.*]

Cross-examination by Mr. Church, de bene esse:

Cross-Q. 16. Mr. Kissinger was in the habit of borrowing things from neighbors, wasn't he?

[*Objected to as not cross-examination, and because no foundation has been laid for such a question; further, as immaterial.*]

A. He borrowed a good bit, like farmers generally do.

Cross-Q. 17. Do you remember whether he ever borrowed your wagon before he bought it?

[*Objected to as not cross-examination.*]

A. Why, I really couldn't remember any more. He had wagons and other things. I really couldn't remember. I was not at home much.

Cross-Q. 18. You mean that he borrowed wagons and other things from you.

[*Objection repeated.*]

A. Yes, yes. I went away in the morning and came back in the evening. I was not at home much, and can't remember. Was not at home much through the day.

Cross-Q. 19. In answer to cross-question No. 17, you said in substance that Mr. Kissinger had wagons and other things; you meant, did you not, that he sometimes borrowed wagons and other things from you?

[Recital in question objected to as not being a true statement of the answer which it purports to repeat.]

The Examiner is requested to read the answer referred to in connection with the present question.]

A. From my family he borrowed them—

[Answer objected to as not evidence.]

Re-direct by Mr. Howson:

Q. Q. 20. You stated in your direct examination that this wagon had been originally part of a buggy; did you or not buy it as a buggy, take the box off, and put a spring-wagon box on?

[Objected to as leading, misstating the evidence, and as not proper re-direct examination—the subject not having been inquired into in cross-examination.]

A. I bought it as a buggy—a kind of a trotting-buggy it was, without top—I had the buggy box taken off and put a spring-wagon box on.

Re-cross by Mr. Melville Church, de bene esse:

Re-cross-Q. 21. You had the box put on the wagon soon after you got it, didn't you?

A. Why, just a while—a few months—I used it as a buggy.

Re-re-direct by Mr. Howson:

Q. Q. Q. 22. Do you or not mean by your last answer that you used it in the condition in which you bought for awhile before you had the spring-wagon body put on?

A. I used it the way I bought it—the same condition—for awhile.

Deposition taken, reduced to writing by me, and by the witness affirmed to and subscribed in my presence this 21st day of June, 1884.

PAUL CHARLTON,

Notary Public, Special Examiner.

PETER KAFFENBERGER.

Recess until 2.30, P. M., this 20th day of June, 1884.

4.30, P. M.

Examination resumed.

Present, Mr. Storrow for complainants, and Mr. Church for respondents.

JOHN W. COWENS, *being produced and affirmed, upon examination saith:*

I am the same John W. Cowens who testified for defendants in this case at Harrisburg. [See defendants' sur-rebuttal record, page 714.]

Examined by Mr. Storrow:

Q. 1. Since you testified, has Mr. James W. Brooks had any conversation with you about the ram?

[*This deposition objected to by respondents' counsel as in violation of the stipulation and assignment of time agreed upon at the close of respondents' evidence in sur-rejoinder, and as, therefore, inadmissible.*]

A. Yes, sir.

Q. 2. Since you testified, has Mr. Church had any conversation with you about the ram; and if so, where?

A. He had; at Mr. Strasbaugh's, at Marysville.

Q. 3. Have you, since you testified, been at Mr. Jacobs' office, and had any conversation there with any of defendants' counsel?

A. I have.

Q. 4. How long ago was this visit to Mr. Jacobs' office?

A. On last Wednesday, if I mistake not; not this week—the week previous.

Q. 5. In your former deposition, you testified that you saw wooden pipes for the ram, and also saw the water running out of an iron pipe near the house on Mr. Kissinger's place, and you testified that you saw these things there in 1876; will you state now whether it was in 1876 or not that you saw those things there?

[*Objected to as incompetent at this stage of the case.*

Complainants refer to the testimony of Dr. Traver, Morley, Rhoads, Given, and others in sur-rejoinder.]

A. I was positive at the time that it was in 1876, but since I have changed my mind; having conversation with others about the same thing, I found that I had made a mistake.

Cross-examination waived.

[Entire deposition objected to for reasons above given.]

Deposition taken, reduced to
writing, and by the witness affirmed
and subscribed to before me this
20th day of June, 1884.

PAUL CHARLTON,
Notary Public, Special Examiner.

J. W. COWENS.

JOHN M. VINK, *being produced, sworn, and examined, saith :*

Examined by Mr. Storrow :

[This deposition objected to by respondents' counsel as in violation of the stipulation and assignment of time agreed upon at the close of respondents' evidence in sur-rejoinder, and as therefore inadmissible.]

My age is thirty-five; I reside at Mount Holly Springs, Cumberland county, Penna.; I am a tinner by trade.

Q. 1. Did you ever live at Marysville, Perry county; and if so, when did you last live there?

A. Yes, sir; I went there in the beginning of 1878, and left there in March, 1879.

Q. 2. What trade did you work at there, and who did you work for?

A. I worked at tinning, and worked for Mrs. Stotter.

Q. 3. I show you a day-book produced by Mrs. Stotter this morning, and call your attention to page 222. Do you recognize this day-book as the day-book which she kept while you worked for her?

A. Yes, sir; I do.

Q. 4. While you worked for her, did you make any of the charges for work you did; and if so, what did you write them on?

A. A slate.

Q. 5. Look at the charge in this book on page 222, "George Kissinger, to funnel and soldering pipe," entered after the date of November 4, 1878. Do you know what those charges were for, and did you do that work, or not?

A. Yes, sir; I did. Mrs. Stotter entered them. I know what they were for.

Q. 6. What was the job that is meant by the first item—the funnel?

A. That was for a strainer.

[Question and answer further objected to by Mr. Hill as an attempt to vary the written record by parole evidence.]

Q. 7. What was the shape of the strainer—how was it made?

A. It was funnel-shaped, covered over at the large end, and punched full of holes.

Q. 8. If you knew, at the time you made it, what it was to be used for, please state.

[Further objected to as calling for hearsay.]

A. It was intended to go on to the end of a pipe going into a spring, to keep the dirt and leaves from getting into it—a water pipe.

Q. 9 The second item in that entry is "soldering pipe;" what was the pipe, and why did it need to be soldered, and what did you do with it?

[Same objection.]

A. It was a piece of gas-pipe that was bursted about a foot; it leaked there, and they brought it to me to solder.

Q. 10. How big a pipe was it?

[Same objection.]

A. It was about inch on the outside.

Q. 11. Was it a short piece or a long piece?

A. A long piece.

Q. 12. Do you remember whether those two jobs—making the strainer and soldering the pipe—were done on the same day, or on different days?

[Objected to so far as the question is designed to, or has the effect to, elicit testimony that they were done on different days, on the ground that it is in contradiction or variation of the written record by parole.]

A. On different days.

Q. 13. How near together?

[Same objection.]

A. One to the other—as if the one was done to-day and the other to-morrow.

Q. 14. How could it happen that the two items would get charged together if they were done the same as one to-day and the other to-morrow?

[Same objection, and further objected to as calling for mere opinion and guess-work.]

A. I made the funnel in the afternoon and soldered the pipe together the next forenoon; therefore, I took and charged them both together and made one bill of it.

Q. 15. Was Mrs. Stotter in the habit of copying off the items from the slate every night?

[*Objected to as immaterial and calling for mere guess-work.*]

A. Well, she was mostly in the habit of doing so.

Q. 16. Did she always do so?

[*Same objection, and also objected to as leading.*]

A. Not always; sometimes she let it run till the second evening.

Cross-examined by Mr. Hill, de bene esse:

Cross-Q. 17. Who came down there to get that job done?

A. Mr. Kissinger.

Cross-Q. 18. Who came down to get the articles after they were completed at the shop?

A. Mr. Kissinger got them.

Cross-Q. 19. Did he come down and order the strainer to be made and the pipe mended on one day, and then come down the next day and got the strainer and pipe?

A. No, sir.

Cross-Q. 20. How did he do it?

A. He came down and ordered the strainer, and I got at it and made it, and he took it along with him.

Cross-Q. 21. Did he tell you he would bring the pipe down and have it mended?

A. No, sir; he didn't say anything about the pipe at that time.

Cross-Q. 22. When did he say anything about the pipe?

A. The next day he brought it down and said that he wanted to put it in and it was bursted. He didn't say anything more about it; he asked me whether I could fix it, and I told him I could.

Cross-Q. 23. Did he stay there till you had fixed it, and then take it away?

A. He didn't just stay in the shop; he started out and said he would be back in a few minutes.

Cross-Q. 24. Do you remember whether that was a piece of new pipe, or old pipe?

A. New pipe.

Cross-Q. 25. How do you happen to remember that fact?

A. Because it wasn't rusted; it was black yet.

Cross-Q. 26. How do you happen to remember such a fact as that after the lapse of about six years?

A. I can remember back fifteen years as well as if it had been yesterday.

Cross-Q. 27. Was there any ice or frost in the pipe when he brought it to you?

A. No, sir.

Cross-Q. 28. Was the pipe dry, or not?

A. It was dry.

Cross-Q. 29. Was the pipe screw-threaded anywhere?

A. No, sir.

Cross-Q. 30. You are sure about that, are you?

A. There was a thimble on the one end of it; I didn't take notice whether that was screwed on any place or not.

Cross-Q. 31. Was the pipe screw-threaded at the end farthest from the thimble?

A. Oh, yes; there was a thread on the other end from the thimble.

Cross-Q. 32. How happened you to observe that screw-thread?

A. The crack wasn't very far from that.

Cross-Q. 33. I suppose you remember particularly the fact of your entering up the charge for that work on the slate, do you not?

A. Yes, sir.

Cross-Q. 34. When did you enter it up?

A. The one charge on the 4th and the other one on the 5th.

Cross-Q. 35. And you have a distinct remembrance of entering up both charges on the slate, have you?

A. Yes, sir.

Cross-Q. 36. How much did you enter up for the work of soldering the pipe?

A. Twenty-five cents.

Cross-Q. 37. And how much did you enter up for the work of making the strainer?

A. Fifty cents.

Cross-Q. 38. What was that strainer made of?

A. Galvanized iron.

Cross-Q. 39. How large was the largest end of it?

A. Five and a half inches, as near as I can get at it, in diameter.

Cross-Q. 40. How long was it?

A. About seven inches long; that is, the whole thing.

Cross-Q. 41. How large was it at the small end?

A. It was two inches at the small end, and then it run back to two and a quarter. There was a collar I soldered fast to the funnel.

Cross-Q. 42. Will you take a sheet of paper and a pen and draw the shape of that funnel so that we can understand how it looked?

[*Witness makes drawing*].

A. There, that was the shape of it.

[*Sketch put in evidence marked "Exhibit Vink Sketch."*]

Cross-Q. 42½. How long did you work at Mrs. Stotter's?

A. I worked for her the first time about one year. The second time I worked about a year and three months, as near as I can get at it.

Cross-Q. 43. Did she have any other workmen besides you in the shop while you were there?

A. No, sir.

Cross-Q. 44. Were you kept pretty busy while you were employed by her in the shop?

A. In the spring and fall I was.

Cross-Q. 45. Name all the different kinds of work that you had to do in the shop while there.

A. I done roofing and spouting and general job-work.

Cross-Q. 46. A good deal of repairing for people around there?

A. Yes, sir.

Cross-Q. 47. What were you working at when Mr. Kissinger called to get you to make this strainer?

A. I was making stove-pipe.

Cross-Q. 48. For whom were you making the stove-pipe?

A. Making it for the shop—for Mrs. Stotter there—we always kept an assortment of stove-pipe on hand.

Cross-Q. 49. What were you doing when Mr. Kissinger called to get you to mend the bursted pipe?

A. That I can't recollect—what I was doing that day. I hadn't started in on anything yet, for he came there about seven o'clock, or half-past seven, in the morning, when he brought the pipe.

Cross-Q. 50. You mean when he came there with the pipe to get it mended, do you?

A. Yes, sir.

Cross-Q. 51. Was the shop where you did your work, and the store-room where articles were kept for sale, both in the same room?

A. No, sir.

Cross-Q. 52. How were they situated?

A. About the same as these two rooms here. The shop was in the rear room and the store in the front room.

Cross-Q. 53. How long did it take you to make the strainer?

A. Twenty minutes, as near as I can get at it.

Cross-Q. 54. Where did Mr. Kissinger stay while you were making it?

A. I suppose he went down to the store.

Cross-Q. 55. Down to what store?

A. To Leiby's store.

Cross-Q. 56. Then he didn't stay in Mrs. Stotter's store or shop while you were making the strainer?

A. No, sir.

Cross-Q. 57. How long was he there at the store or shop when he came there to order the strainer, before he went down to Leiby's store?

A. About five minutes; I don't think he was there any longer than that.

Cross-Q. 58. What time of day was that?

A. It was about half past one or two o'clock in the afternoon.

Cross-Q. 59. Was Mrs. Stotter there in the store at that time?

A. She was back in the kitchen, and she came to the door leading into the store and stood there while I took the order for the funnel.

Cross-Q. 60. Was she there when Mr. Kissinger came and got the funnel?

A. Yes, sir.

Cross-Q. 61. How long did Mr. Kissinger stay when he came back from Mr. Leiby's store and got the funnel?

A. He didn't stay very long; I can't just tell you how long; he was in a hurry to get back home.

Cross-Q. 62. Why did he get the funnel made that peculiar shape?

A. Well, he got it made that way to keep the leaves from catching to it, and the dirt from flowing into the pipe.

Cross-Q. 63. Did he say that he had had any trouble with the leaves and dirt?

A. Yes, sir; he did.

Cross-Q. 64. What did he say that the leaves and dirt had done in the way of troubling him?

A. He said it had clogged his pipe shut at the end.

Cross-Q. 65. Did he say that he had tried any means for keeping the leaves and dirt out of the pipes?

A. No, sir; he didn't.

Cross-Q. 66. Did he say that the leaves and dirt had troubled him a good deal, so that he had to provide something to stop it?

A. Yes, sir; and I put him on the plan of this funnel.

Cross-Q. 67. You got up a plan of a funnel for him, did you, after he had described to you the difficulty that he had had?

A. I had made several before in Juniata county.

Cross-Q. 68. Did he say how long he had been troubled with leaves and dirt getting into the pipes?

A. No, sir; he didn't.

Cross-Q. 69. And didn't say whether he had tried anything else to stop it before you made that funnel?

A. No, sir.

Cross-Q. 70. You have told us substantially all that he said about the funnel, have you?

A. Yes, sir.

Cross-Q. 71. And all he said about the trouble with the leaves and dirt?

A. Yes, sir.

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me this
20th day of June, 1884.

FRED. M. OTT,
Examiner.

JOHN M. VINK.

[Inasmuch as the defendants put in evidence a certain incompetent certificate on page 128 of their printed testimony in sur-rejoinder, the complainants now put in evidence a certified copy of the list of voters who voted in Mrysaville borough at the November election of 1878. It is as follows:

LIST OF VOTERS WHO VOTED IN MARYSVILLE BOROUGH, PERRY COUNTY,
PA., NOVEMBER ELECTION, 1878.

- | | |
|-------------------------|-------------------------|
| 1. John Gushard. | 40. Joseph Russel. |
| 2. A. G. King. | 41. J. H. Seidel. |
| 3. J. C. Zimmerman. | 42. Isaac Platt. |
| 4. J. W. Bears. | 43. David Geib. |
| 5. L. W. Brabson. | 44. Jacob Surls. |
| 6. John C. Eppley. | 45. John W. Flickinger. |
| 7. Wm. Donahue. | 46. Joseph Gensinger. |
| 8. A. W. Ensminger. | 47. W. L. Taylor. |
| 9. John H. File. | 48. H. H. Fisher. |
| 10. Samuel File. | 49. Isaac Klingler. |
| 11. Geo. W. Eppley. | 50. Wm. King. |
| 12. E. W. Wise. | 51. Theo. Fenn, Jr. |
| 13. Geo. Jett. | 52. Franklin Danner. |
| 14. Samuel Strausbaugh. | 53. John Houdeshell. |
| 15. John Jobson. | 54. Noah Bortner. |
| 16. E. G. B. Hill. | 55. John J. Neale. |
| 17. John A. Beck. | 56. Amos A. Jones. |
| 18. Geo. Kocher. | 57. W. H. Pfeiger. |
| 19. Lewis Wagner. | 58. E. A. Pfeiger. |
| 20. Thomas Pine. | 59. Noah Shoop. |
| 21. A. J. Seidel. | 60. Michael G. Shriner. |
| 22. C. M. Dickenson. | 61. Wm. Bratton. |
| 23. A. C. Dissinger. | 62. John H. Walton. |
| 24. James Leedy. | 63. L. F. Houdeshell. |
| 25. John Wetzler. | 64. Jesse Wagner. |
| 26. G. L. Davis. | 65. Wm. Bonison. |
| 27. James M. Heany. | 66. Jesse Rathfon. |
| 28. T. W. Morley. | 67. G. W. Clendennin. |
| 29. E. B. Leiby. | 68. John A. Mann. |
| 30. Samuel M. Eppley. | 69. Henry Shofner. |
| 31. James Lytle. | 70. H. S. Reamer. |
| 32. Samuel Jobson. | 71. Edward Crist. |
| 33. Joshua Hipple. | 72. James Chamberlain. |
| 34. Robt. Miller. | 73. John S. Weaver. |
| 35. G. E. Zehner. | 74. Theo. Fenn, Sr. |
| 36. Wm. Stock. | 75. Edward Harper. |
| 37. Joseph Morthland. | 76. H. H. Paul. |
| 38. John Carns. | 77. W. W. Farnsworth. |
| 39. John S. Funk. | 78. Wm. Eppley. |

- | | |
|--------------------------|----------------------------|
| 79. W. H. Wagner. | 121. Atchison Brady. |
| 80. J. M. Vink. | 122. Geo. King. |
| 81. Joseph Hays. | 123. Wm. Keim. |
| 82. Chas. R. Lilly. | 124. Simon Kriser. |
| 83. Andrew Glosser. | 125. Wm. Road. |
| 84. Wm. S. Gault. | 126. Eml. Ney. |
| 85. Geo. Valentine. | 127. Daniel Sanders. |
| 86. B. F. McNear. | 128. Leonard Swartz. |
| 87. James Nesbit. | 129. Fred. G. Weaver. |
| 88. Gabriel Crook. | 130. Saml. Butler. |
| 89. Herman J. Eppler. | 131. Henry Echelberger. |
| 90. Alfred Carl. | 132. John H. Funk. |
| 91. Michael Dori. | 133. W. W. Jackson. |
| 92. John Kaylor. | 134. John Klingler. |
| 93. A. J. Traver. | 135. I. B. Traver. |
| 94. Wm. H. Robinson. | 136. Jacob Zang. |
| 95. J. J. Burkholder. | 137. Geo. W. Dick. |
| 96. J. M. Wagner. | 138. Andrew Ganster. |
| 97. Wm. Gettis. | 139. John Stephenson. |
| 98. S. R. Myers. | 140. Geo. W. Roads. |
| 99. Geo. Colier. | 141. Henry Weand. |
| 100. B. F. Bryan. | 142. Daniel Moore. |
| 101. Geo. Casper Earley. | 143. John Ellenberger, Sr. |
| 102. Edward Furkenroad. | 144. John A. Creek. |
| 103. Joseph Saddler. | 145. Lewis Rutledge. |
| 104. Geo. Smith. | 146. Benj. Longnecker. |
| 105. Frank Haines. | 147. John Rupley. |
| 106. Samuel Hart, Jr. | 148. Frank Gamber. |
| 107. John Rose. | 149. John J. Wenrick. |
| 108. John Rehrer. | 150. Harry C. Colder. |
| 109. Joseph Garverich. | 151. W. O. Smith. |
| 110. Daniel Hinton. | 152. James D. Miller. |
| 111. L. C. Wax. | 153. James Nesbit. |
| 112. Wm. Beck. | 154. James Williard. |
| 113. Geo. Hackett. | 155. Saml. Hart, Sr. |
| 114. Purtanta Mease. | 156. Joseph Edwards. |
| 115. Amos Clendennin. | 157. Charles Edwards. |
| 116. David Brightbill. | 158. Geo. W. Hays. |
| 117. Theo. B. Meals. | 159. B. F. Flickinger. |
| 118. Saml. Wolf. | 160. Simon Eppler. |
| 119. L. T. Collier. | 161. Stephen Morley. |
| 120. J. W. Felix. | 162. Wm. B. Bell. |

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| 163. Daniel Heaney. | 186. Chas. W. Rhiver. |
| 164. Jacob Tuckey. | 187. Levi Dice. |
| 165. Winfield Furtenbaugh. | 188. Wm. A. Sheaffer. |
| 166. Cyrus Rhoads. | 189. P. J. Nevin. |
| 167. John Herald. | 190. W. D. Hornberger. |
| 168. Henry Sheaffer. | 191. O. H. Miller. |
| 169. Jacob Scantling. | 192. Henry Gamber. |
| 170. Geo. Genster. | 193. Wm. Baughman. |
| 171. C. S. Wise. | 194. G. W. Kissinger. |
| 172. G. W. Kreidler. | 195. Wm. Garverick. |
| 173. Wm. Peacock. | 196. Charles Condell, junior. |
| 174. Jesse Robinson. | 197. Edward Hoffman. |
| 175. Wm. Appleton. | 198. Wm. M. Schools. |
| 176. Nathan Faringer. | 199. John Houser. |
| 177. G. C. Strine. | 200. John Christ. |
| 178. A. J. Ellenberger. | 201. Wm. Matchett. |
| 179. A. J. Staller. | 202. Andrew Swartz. |
| 180. Wm. H. Staller. | 203. Reuben Huber. |
| 181. Noah Worley. | 204. Alfred Zigler. |
| 182. F. M. Yount. | 205. Wesley Miller. |
| 183. Frank Kissinger. | 206. John Redebaugh. |
| 184. Sam'l Kreiser. | 207. John Stiles. |
| 185. James Champion. | |

STATE OF PENNSYLVANIA, } ss:
Perry County,

I, A. B. Grosh, Prothonotary of the Court of Common Pleas of Perry county aforesaid, do hereby certify that the foregoing and annexed list is a true copy of the list of voters of Marysville borough who voted at the November election, A. D. 1878, full and entire, as said list remains on file in said office.

In testimony whereof, I hereunto set my hand and affix the seal of said Court at Bloomfield, this 14th day of November, A. D. 1883.

[Seal of Court
of Common Pleas
of Perry county,
Penna.]

A. B. GROSH,
Prothonotary.

JUNE 21, 1884, 9, P. M.

Present, Mr. Storrow and Mr. Howson for complainants, and Mr. Hill, Mr. Jacobs, and Mr. Church for respondents.

[Counsel for complainants announce that their evidence is now closed with the exception of the deposition of Mr. Samuel Geib, at Marysville.]

Adjourned, by consent, until June 23, 1884, at 5.30, P. M., at Marysville, Perry county, Pennsylvania.

MARYSVILLE, JUNE 23, 1884, 5.30, P. M.

Examination resumed at Pennsylvania railroad freight office.

Present, Mr. Howson for complainants and Mr. Jacobs for respondents.

SAMUEL G. GEIB, *being produced, sworn, and examined, saith:*

Examined by Mr. Howson:

I am the same Samuel G. Geib who was examined by the complainants as a witness in this case in their behalf at Baltimore, Md., August 4, 1882, [see complainants' printed record, page 579,] and by respondents at Harrisburg, Pa., [see respondents' printed sur-rebuttal record, page 1134.]

Q. 1. In your deposition given for complainants in this case in August, 1882, you testified concerning a certain freight receipt, No. 485, a copy of which receipt appears in complainants' evidence, page 554; and you also testified concerning a certain order for the delivery of the freight referred to in said freight receipt, said order being annexed to said freight receipt; a copy of said order is printed on page 555, complainants' proofs, and, as there printed, is dated "Eberly's Mills, Pa., Sept. 26, 1878," and is signed "Daniel Drawbaugh;" will you please now refer to the original order annexed to said freight receipt, so that the Examiner may take a correct copy thereof upon the record at this point, together with a copy of the indorsement on the back of said order?

A. I here produce the freight-receipt book containing said freight receipt, and, annexed to said freight receipt, the order in question.

[Witness produces Freight Receipt Book of the Pennsylvania Railroad Company for Marysville Station, (Form 85.)

The Examiner copies therefrom freight receipt 48b, which is as follows:

"No. 485

Marysville Station July 2nd, 1878.

Mr. D. Drawbaugh

To Pennsylvania R. R. Co. Dr.

For Freight from Philada., per Manifest No. 22694.

	Marks	Weight	Rate	Amount
On 2 Bdle Pipe		165	21	.35

Received the above articles from Pa. R. R. Co.

J. C. Zimmerman."

The order annexed to said receipt is as follows :

"Eberly's Mills, Pa., Sept. 6th, 1878.

Mr. Guide agent P. R. R. at Marysville.

Please let George Kissinger have the pipe at your warehouse as the pipe is for his use.

Danl. Drawbaugh."

The indorsement on said order is as follows :

"Mr. Gibe let Zimmerman have them pipe.

Geo. Kissinger."}]

Q. 2. Will you please refer to the cash-book of your office and indicate therein, so that the Examiner may copy upon his record, the entry, if any there be, setting forth the payment of the freight on the goods referred to in the foregoing freight-receipt and order ?

A. Here it is.

[Witness indicates the following entry in Cash-Book, Form 44 :

"1878.

Sept. 10, D. Drawbaugh Bill 485 .35"]

Q. 3. By whom and when was this entry made ?

A. The entry was made by George W. Rhoads, who was then, and is yet, assistant agent.

Q. 4. Is it or not the custom of your office in the course of its business to make such entries on the day of their date ?

[Objected to as incompetent.]

A. Yes, sir.

[The entry from cash-book objected to as not sufficiently proven, and the entire deposition objected to as immaterial, irrelevant, incompetent, particularly at this stage of the case, as not in rebuttal of anything proven in defendants' sur-rejoinder, and as taken in violation of the agreement of counsel as to the number of witnesses to be examined by complainants in reply to defendants' sur-rejoinder, (see page 249 of respondents' evidence in sur-rejoinder.)

Complainants reply that this testimony is taken simply for the purpose of correcting what sufficiently appears to be a clerical error in the tran-

scription or the printing of the order referred to in the foregoing testimony, as printed upon page 555 of complainants' proofs. Complainants have been compelled to take this course by the conduct of defendants in declining to accede to any of various other plans suggested of correcting this error. To so much of the objection as states that this testimony is taken in violation of a certain agreement of counsel, and in reply to the same objection taken to the depositions of David Cowens, and other witnesses examined last week on behalf of complainants, complainants make the following statement and draw the attention of the Court to the facts stated.

Three of the witnesses so examined, to wit: Peter Wilson, James M. Miller, and George D. Herbert, were called simply to prove certain newspaper extracts offered in evidence by complainants, were so called owing to the insistence of respondents' counsel upon the making of such formal proof; and that the calling of Herbert was necessitated by a purely and minutely technical objection taken by defendants to the testimony of Wilson. The testimony of James K. Cotterell, Theodore C. Ives, and David Cowens was, either wholly or in large part, to matters first elicited or inquired of by defendants in their cross-examination of the witnesses Robert O. Moore and Leonard Swartz; and that having been properly called as to such matters, it was competent for complainants to examine said witnesses as to their knowledge upon other relevant and material points. The present witness is called, as stated, merely for the correction of an error in the printing of the proofs; and the attention of the Court is called particularly to the fact that in the proffer of the order in question, as printed upon page 554, complainants' proofs, the said order is referred to as being dated September 6th, 1878.

And the attention of the Court is further called to the fact that no objection was made by defendants to the calling of this witness when, on Saturday last, complainants announced that their testimony was closed with the exception of this witness.

Counsel for defendants call attention to the fact that the testimony of this witness is not limited to the correction of the clerical error referred to, and state that complainants have never asked, or suggested to defendants, the correction of said error, without more, but have always coupled their request and suggestion with the further request to admit in evidence, without proof, the alleged entry upon the railroad cash-book referred to in this deposition. Defendants object to the statement and argument of complainants' counsel with regard to the number of the witnesses examined

by complainants in reply to the defendants, sur-rejoinder; and, without further reply, submit that they are pursuing a lawful and proper course in raising the above objections to this deposition.]

Q. 5. How long, or about how long, have you known the George W. Rhoads referred to as being a clerk in this office, and how long have you been familiar with his handwriting?

[Objected to as incompetent, no proper foundation having been laid for the question.]

A. I have known him as a clerk in this office for over ten years; have been familiar with his handwriting the same time.

Q. 6. Is Mr. Rhoads present in this office to-day? If not, what, if you know is the reason of his absence?

A. He is not present; he is sick at home. He went home at dinner-time sick, and said if he didn't feel better he wouldn't come back; and he didn't come back.

[Objections renewed and cross-examination declined.]

Examination taken, reduced to
writing, and by the witness sworn
and subscribed to before me, this
23d day of June, 1884.

FRED. M. OTT,
Examiner.

SAML. G. GEIB.

[Complainants' counsel announce that their testimony is now closed.]

I hereby certify that the foregoing depositions of witnesses on behalf of complainants were begun at Harrisburg, Pennsylvania, on the 14th day of June, 1884, and completed at Marysville, Pennsylvania, on the 23d day of June, 1884, having been adjourned from time to time, and from place to place, as set forth in the foregoing record; and that the witnesses severally made oath or affirmation, and subscribed to their respective depositions in my presence, as set forth, except such witnesses as were, by consent of counsel, examined before Paul Charlton, Esq., a notary public of the city of Harrisburg, and county of Dauphin, Pennsylvania, as appears upon said record; also that all the exhibits put in evidence, as well those produced before the said Paul Charlton as those produced before me, were left in my custody; and that the agreements of counsel, set forth upon the record, were made in my presence.

Witness my hand this 23d day of June, 1884.

FRED. M. OTT,
Examiner.

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